

Captain *Temple West's*  
**D E F E N C E**

AGAINST

Vice-Admiral *Lestock's*  
**C H A R G E:**

RELATING

To his Conduct in the Action off  
*Toulon*, betweent his *Majesty's Fleet*,  
under the Command of *ADMIRAL*  
*MATTHEWS*, and the combined  
Fleet of *France* and *Spain*.

With *REMARKS* upon the Sentence of  
the *COURT*;

And *ARGUMENTS* brought in Justification  
of his Conduct, from the *Sentences* be-  
fore pronounced on other Captains, and  
from the Discipline required by the In-  
structions.

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**L O N D O N:**

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THE  
CROWN

BY J. A. H.

THE  
CROWN

## Charge against Captain Temple West of the Warwick.

I. THAT during the whole Month of *February*, in the Year of our Lord One thousand seven hundred and forty-three, *Thomas Mathews* Esq; was Admiral and Commander in Chief of his Majesty's Fleet in the *Mediterranean Sea*; and that Captain *Temple West*, during all the said Time, was Captain and Commander of his Majesty's Ship *Warwick*; and then was in the *Mediterranean*, in the Division of *William Rowley* Esq; Rear-Admiral of the White Squadron, and in Command of a Division of his Majesty's said Fleet, and under the Command of the said *Thomas Mathews*: And that, on or about the eleventh Day of the said Month of *February*, the Fleet under the Command of the said *Thomas Mathews*, was in Sight and View of the combined Fleets of the King of *Spain*, his Majesty's then declared Enemy, and the *French* King his Ally; upon which he, the said *Thomas Mathews*, did cause the Signal to be made for the said Fleet to form a Line of Battle a-head, which Signal was publickly made and repeated by the said *William Rowley*, then in Command as aforesaid; and that the said *Temple*

*West* then as aforesaid, was in the said *William Rowley's* Division, under the Command of the said *Thomas Mathews*, and in full Sight of the said Signal so made and repeated. And the said combined Fleets, his Majesty's declared Enemy and their Confederates, being very near, and in likelihood of an Engagement, the said *Thomas Mathews* did cause the proper Signal to be made to engage; and did then and there, with the said Rear-Admiral and several of his Majesty's Ships under his Command, bear down upon, engage, and join Battle with his Majesty's said Enemies, and their Confederates, and endeavour to take, fire, kill, and endamage the said Enemy: That the said *Temple West* was in full Sight and View of the Signals to form a Line of Battle a-head, and to engage, as aforesaid; and in View of the Engagement; and well knew the Duty required by the said Signals, and that, by the Articles of War, the fighting Instructions, and the Discipline of the Navy, it was his Duty to have done his utmost to take, fire, kill, and endamage his Majesty's Enemies, as he might and ought to have done; but, instead thereof, withdrew, or kept back from the Fight, and continued with his Majesty's said Ship under his Command to windward of the Enemy, and out of Gun-shot, during the Engagement; notwithstanding it was in his Power to have formed,

formed, or kept, and continued in the Line, and to have engaged with the said Ship under his Command in fight with the Confederates of his Majesty's Enemies; in Breach of the Articles of War, his Majesty's Instructions, and the Commands of the Admiral as aforesaid.

II. That, by the first Article of his Majesty's fighting Instructions to his Commanders, it is expressly charged and commanded to the Effect following, *viz.* Every Captain in the Line of Battle a-head is to observe and keep the same Distance those Ships do which are next the Admiral, always taking it from the Center: That, by the thirteenth Article of the said Instructions, it is also charged and commanded, as soon as the Admiral shall hoist a red Flag on the Flag-staff on the Foretop-mast Head, and fire a Gun, every Ship in the Fleet is to use their utmost Endeavour to engage the Enemy, in the Order the Admiral has prescribed unto them; That, by the Seventeenth Article of the said Instructions, it is expressed and commanded, that whilst the Fleet is engaged with the Enemy, each Ship is to keep within half a Cable's Length one of another; That, by the Twenty-fourth Article of the said Instructions, it is also charged and commanded, that no Ship in the Fleet shall leave her Station upon any Pretence whatsoever, till the Captain of such Ship has acquainted

his Flag, or the next Flag-Officer to him, with the Condition of his Ship, and received his Direction therin : Yet, contrary to the aforesaid Articles, He, the said *Temple West*, with the said Ship under his Command, did keep to windward and a-head of his Station in the Line of Battle, during the Engagement ; notwithstanding it was in his Power to have engaged, with the said Ship under his Command, in fight with his Majesty's said Enemies, in his Station in the Line of Battle, and as near the said Enemy as the said Admiral and Rear-Admiral did, had he used the proper Methods for that Purpose ; and though it was his Duty so to have done, yet he kept, and continued with the said Ship, out of his Station, and, during the Time that the said Rear-Admiral was laying to, and engaged as aforesaid, kept the said Ship under his Command, under Sail, and did thereby encrease his Distance out of his Station, and divide and separate apart the said Ship under his Command, more and more, from the Admiral ; in Breach of his Duty, and Violation of the Obedience due to his Majesty, his Instructions, and Articles of War.

III. That, by the Twenty-second Article of his Majesty's fighting Instructions to his Commanders, it is expressly charged and commanded to the Effect following, *viz.* If any of the Ships in the Fleet are in Distress, the next Ship to them is strictly required to relieve

lieve them ; And, by the twenty-fourth Article of the said Instructions, in case any Ship shall leave his Station in the Line of Battle, the next Ships are directed to close up the Line : notwithstanding which, and that his Majesty's Ships posted in the Line of Battle between the said Rear-Admiral and his Majesty's said Ship *Warwick*, under the Command of the said *Temple West*, were the *Boyne*, *Chichester* and *Nassau*, which Ships did not keep in their Station, but to windward of the Line ; and that, during the Engagement aforesaid, his Majesty's Ships *Barfleur* and *Princess Caroline* were hard pressed, and engaged in fight with his Majesty's, said Enemies, and their Allies and Confederates, and in danger of being taken, or destroyed, by the great Superiority of the French Squadron ; All which he, the said *Temple West* saw ; he, the said *Temple West*, then being in Command as aforesaid, and being capable of yielding Assistance and Relief to his Majesty's said Ships *Barfleur* and *Princess Caroline*, by going with his Majesty's Ship *Warwick*, then under his Command, to their Assistance, or keeping and engaging in his Station, which he might and ought to have done : Yet he, the said *Temple West*, did not do his utmost to assist and relieve his Majesty's said Ships, but withdrew and kept back, with his Majesty's said Ship under his Command, from the said Fight or Engagement,

ment, and from the Assistance of his Majesty's said Ships *Barfleur* and *Princess Caroline*, by going from and increasing the Distance, separating a-part, a-head, and to windward, the said Ship under his Command from his Majesty's said Ships *Barfleur* and *Princess Caroline*, while they were engaged in Fight as aforesaid; contrary to his Duty, and the Articles of War.

IV. That the said *Temple West* was, and is guilty of Disobedience to his Majesty's Instructions, and the Signals, and Commands of the said Admiral and Rear-Admiral, and of Neglect of Naval Military Discipline, and of divers notorious Breaches of his Duty, as a Captain and Commander of one of his Majesty's Ships of War, upon the said eleventh Day of *February*, before and during the said Engagement of his Majesty's said Fleet with the said combined Fleet of *France* and *Spain*, in the *Mediterranean Sea*, as aforesaid; and was one of the principal Causes of the Miscarriage of his Majesty's said Fleet.

*A true Copy.*

CHA. FEARNE, Ju. Ad.

Captain Temple West's  
Introduction to his Answer.  
to Vice-Admiral Lestock's  
Charge.

AFTER having had my Conduct examined into in the General Enquiry of the Committee of the House of Commons, without any Part of it meeting with the least Mark of their Disapprobation; after having received the Praises and Thanks, both of my Commander in Chief and the Admiral, in whose Division I served on the Day of the Engagement, for my Behaviour on that Day; and after having had the Testimony of both the late and present Board of Admiralty's good Opinion of Me, in each of them appointing Me to the Command of a Ship; the latter of which Appointments being after the Enquiry of the Committee, at which almost the whole present Board assisted, to whom therefore the Part I took in the Day of Action, must be as clearly known as their Approbation of it is shewn in the before-mentioned Mark of their Kindness to me: After this, and so many other strong Declarations in my favour, to have, on a sudden,

an Attack made upon my Conduct, could not but be a Matter of great Surprize to Me; and the more so, as my Accuser had let a Year and half pass by him without having given in this Charge against me, in which Time he had been called upon by the Committee of the House of Commons, to whom he was directed to give all the Information he was able concerning the Conduct of the Fleet, and to whom, amongst other things, he declared that he had no Accusation of Misbehaviour to lay to the Charge of any body but Mr. *Mathews*, and the Captains of the four Ships that were a-tern of the *Marlborough*: And whoever reads his Account of the Engagement, will find, whatever he may urge of there being no Signal to direct the head-most Ships of the Van to pursue the Conduct they did, that nevertheless he acknowledges the Usefulness and Necessity of that Conduct, in this following Description of it; in which is shewn, ‘ That the *Nassau*, *Warwick*, and *Sterling-Castle* kept their Wind, endeavouring to prevent the *Fronsob*, who had so great a Superiority as Nineteen against Seven, from tacking and doubling upon them. And in his Recapitulation, he declares himself more fully to this Purpose, where, after taking notice of the Danger the Van was in from its Weakness, he quotes Mr. *Mathews*’s Account, to shew that there were but three *French* Ships engaged,

‘ the

'the rest keeping the Wind in-order to tack  
 'and weather us; but that our Van keeping  
 'the Wind of them, prevented their Designs  
 'taking place. And, as it is notorious, Mr.  
*Lefstock* then goes on to observe, that Ad-  
 'miral *Mathews* did not direct the Van to  
 'keep the Wind, but kept the Signals abroad  
 'for the Line and engaging; it appears that  
 'our Van was saved by Disobedience, and that  
 'no Measures were taken by Mr. *Mathews*  
 'to secure it against more than two thirds of  
 'the Confederate Fleet.' Therefore, whether  
 in this Declaration he means only to take no-  
 tice of this Want of Signal in Mr. *Mathews*  
 as an Omission that might have been attended  
 with bad Consequences, had the headmost  
 Ships in the Van strictly observed the other  
 Signals: Or whether at the same time, whilst  
 he gives it as his Opinion, the Propriety and  
 Fitness of such a Conduct as was pursued by  
 them, he intends also to be understood, that  
 without a proper Signal they were not justi-  
 fied in it, I will not take upon me to deter-  
 mine. Certain however it is, that the Com-  
 mittee of the House of Commons, stood in-  
 formed by him both of the Behaviour of the  
 headmost Ships of the Van, and the Circum-  
 stances (which he calls Disobedience) under  
 which they acted. And alike certain is it,  
 that as he amended every Part of the Enquiry,  
 he could not but know the advantagious  
 Opinion the whole Committee had of their

Behaviour. He could not but have heard many approving Expressions directed to Me, both from the Speaker of the House of Commons, and others, in regard to the Account I gave of the Action, in which was included my particular Behaviour; and of which no Man honoured me with a higher Approbation of it than that Gentleman whose Opinion my Accuser has the highest Reason to value, and whose Knowledge, Abilities, and Judgment I didn't think he cou'd have call'd in question; which he most certainly does by this Charge he has laid upon me, as he does also that of the Committee of the whole House of Commons; or, if not their Judgment, it must be confess'd, he does their Justice, as he does in a stronger manner that of the Board of Admiralty. An Attack therefore from a Person thus inform'd of the Proceedings of the Committee, thus having confessed to them in the general, that he had no Accusation of Misbehaviour to lay to my Charge: Thus having declared himself in the manner he has done in relation to the Conduct of the headmost Ships in the Van, and after so great a Length of Time could not, I say, Sir, but be a Matter of the greatest Surprise to me. But to some Men no time is too late to do injury to an Officer's Character. No Cause so clear, which a blackening Veil cannot be thrown over. I should not have troubled this honourable Court with so particular

ticular an Account of the Proceedings of the Committee, and of what Mr. *Leflock* said and heard at the House of Commons, was I not called upon to do it, to defend my Reputation from any Suspicion, in the first place, That the Charge now laid against me was form'd from any Matter other than what my Accuser had laid before the Committee. Secondly, to secure it from suffering by any Misinterpretation of the World, who might otherwise have been led to believe, that the Sense of the Committee corresponded with Mr. *Leflock*, in fixing this present Charge upon me. And lastly, to shew to this Court, the different Opinion which my Accuser then treated my Conduct with, from that he now has given of it. An Opinion, which if form'd into a Charge, could not accuse me of either neglecting to take Advantage of the Enemy, or of exposing the English Fleet to any Danger or Distress. But an Opinion, in which the full Extent of my Crime is to have contributed by my Conduct, contrary to the Signal then abroad, in preventing the Enemy from taking an Advantage they endeavoured at; and in securing and protecting the Van of our Fleet from falling into their Hands: An Opinion, therefore, which to mark my Conduct with Disobedience must fix upon a commanding Officer's Signal, a Meaning Mr. *Leflock* best knows, whether it can ever bear, but what I never thought was

Mr.

Mr. Mathew's Intention, That of giving his Majesty's Ships to the Enemy.

A Charge therefore of the sort I have mention'd, if it could be called a Charge, my Accuser had reason to believe would not meet with a more serious Reception here, than it had done at the House of Commons. And therefore, in opposition to what he there declared, he now adds to my Accusation, of disobeying Admiral Mathew's Signal, That of my being one of the principal Causes of the Miscarriage of that Fleet; the Preservation of which he before allowed Me to have contributed to. And that I did contribute to its Preservation, and not to its Miscarriage, as also that in every Step I complied with my Instructions, and my Admiral's Signal, is what I doubt not to make appear to this Court in my Answer to my Charge; an Examination of which I shall beg leave to enter upon, after the Court has gone thro' the Examination of the Evidences, in which the pernicious Measures and extravagant Absurdities required in my Charge will fully be made known to them; and I flatter myself afterwards to be able to shew the Inconsistency of them to the Instructions, however plausibly they may now be brought in support of them.

Captain

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Captain *Temple West's*  
D E F E N C E  
A G A I N S T  
Vice-Admiral *Lestock's*  
C H A R G E.

A S my Defence, Sir, is of a considerable Length, on account of the Nature and Malignity of my Charge, I shall not therefore take up the Time of the Court in entering upon a particular Detail of what every Evidence for the Crown has said; but only in general observe, that there is not any one that has declared me to be either a Principal, or a Part of the Cause of the Miscarriage of his Majesty's Fleet: but on the contrary, most of them have said, that I was a Means of its Preservation, by leading on, and keeping to Windward of the Enemy\*. There is not any one that has said the *Barfleur* and *Prince's Caroline* wanted Assistance; but many that have been asked the Question, have said that they wanted none. There are not any that have said, had the *Warwick* laid to in a Line with

\* Particularly Captain *Oborn* of the *Prince's Caroline*, who is in the highest Esteem, as an experienced, gallant and good Officer, and a Man of great Worth and nice Honour.

with Admiral *Rowley*, that she could have engaged within Point-blank\*, but those who have been asked the Question haye said, she could not †. There are none that have said, that had I laid to whilst the *French* led on, that I could have had any Ship abreast of me: But many have said, that had the head-most Ships laid to, the *French* could have doubled, and brought the Van betwixt two Fires. And lastly, there is not an Evidence has said, that the *Boyne*, *Chichester*, and *Nassau* were all in a Line of Battle with Admiral *Rowley*. And I must observe, that Mr *Lefrak's* Questions, which intend to shew the Necessity and Obligation of the Ships a-head of Admiral *Rowley's* forming the Line, shew at the same time, that, as they did not form the Line, that it was not in my Power alone to have done it, and therefore he very artfully forms the Line for them, in order that it may appear that I could have been in it, and was not, if the Methods had been used by other Ships which were not. These with his other Questions, which blend Facts and Dury together, must be either calculated to mislead, and are therefore of a Sort which he might reasonably conclude would not proceed from the Court, or they must suppose Distrust or Incapacity in the Court, whose Province as

\* And at a greater Distance the Fighting Instructions forbid to engage.

† Particularly Captain *Huish*, whom Mr *Lefrak* look'd upon to be so material an Evidence against me, that he had my Tryal put off on account of his Indisposition.

it is to judge, so is it, I presume, to examine, and not to have the Cause of the Person tried, prejudged by the Evidences, or their Judgment set up in Opposition to that of the Court, which seems to be a principal View in this manner of Proceeding ; and to what End, I need not inform this honourable Court, who are too penetrating not to discover it : And therefore, at the same time, as it argues an Indulgence in them in admitting of it, it does also a Consciousness of their own Integrity, from which I am confident that that Indulgence will not extend to the injuring any Man whom he employs them against ; and therefore I shall chearfully enter upon an Examination of my Charge, the first Article of which contains an Accusation against me to the Effect following.

That the Signal was made for the Line of Battle a-head ; and our Fleet being near the Enemy, the Admiral made the Signal to engage, and bore down with the Rear Admiral and several others of his Majesty's Ships to engage the Enemy. That I saw these Signals, and well knew the Duty required by them ; and that by the Articles of War, the fighting Instructions, and the Discipline of the Navy, it was my Duty to have done my utmost to take, fire, kill, and endamage his Majesty's Enemies, as I might and ought to have done ; but instead thereof, withdrew or kept back from the Fight, and continued to Windward of the Enemy, out of Gun-shot

shot during the Engagement, tho' it was in my Power to have formed, kept, and continued in the Line, and to have engaged the Enemy, in Breach of the Articles of War, his Majesty's Instructions, and the Commands of the Admiral.

That the Signals mentioned in this Article were made by Mr. *Mathews*, and that he and Admiral *Rowley*, with several others of his Majesty's Ships engaged the Enemy, which I did not, I am ready to admit; as also, that I well knew the Duty required by these Signals, which is explained by the Fighting Instructions, and the Discipline of the Navy, and Obedience to them exacted by the Articles of War. But that I could have complied with those Signals, either in the Manner the Admiral commanded, or the Instructions direct them to be complied with, is what I do deny; as also that I could have form'd, kept and continued in any other Line than that I was in, consistent with my Instructions, or that it was my Duty to have acted othewise than I did.

The Order of a Line of Battle in which a Fleet is to engage, is described by the first, thirteenth, and seventeenth Articles of the Fighting Instructions \*, to be when it is connected at proper Distances, so as each Ship to give mutual Support and Aid to the other in the Order the Admiral has directed them to place

\* See the Articles at the End, where I refer the Reader, for all hereafter mentioned.

place themselves; and the Situation in which the Admiral would have a Fleet engage, is in conforming to his Signals then abroad at the Time the Signal for engaging is out.

When Admiral *Mathews* made the Signal for the Fleet to engage, no other Signal but that and the Signal for the Line of Battle a-head was out, at which time, and when he went down to engage, the whole Fleet a-head of him was leading up to the Enemy, to place themselves in their proper Order: But soon after the Admiral's going down, they either brought to, or bore away upon a Part of the Enemy, at which time the *French* Fleet were lying to.

Mr. *Lefstock*, in speaking of the Situation of Part of our Fleet at that Time, says, that seven of our Ships a-head of the *Norfolk* were opposed to one of the Enemy's, and that afterwards these seven were joined by the *Berwick*, which Ship bore down to engage that Ship of the Enemy: The remaining Part of our Van, consisting of seven Ships of the Line, and a Fifty Gun ship, was opposed by Mr. *Lefstock*'s Account to nineteen Ships of the Enemy, which were regularly connected together, whilst our few were disjointed. Admiral *Rowley* was opposed to the fourteenth Ship of the Enemy, and the *Prince's Caroline* to the Ships astern, whilst the *Boyne* and *Chichester* were a-breast of the twelfth and thirteenth Ships of the

Enemy ; but Mr *Lefstock* says to Windward of the Line, and out of their Stations, as he says, was the *Nassau*, which Ship, by the Evidence, appears to have been a considerable Distance a-stern and to Windward of the Ship I commanded, and the *Sterling-Castle* a-head of me, which Ships were a-breast of the two headmost of the Enemy's Line. This Situation I have described of the different Ships as far as Admiral *Rowley*, is proved by Evidence, in what respects their Station a-head, and it also nearly agrees with the Account given in the Narrative, which says that Mr. *Rowley* was near being a-breast with the *French* Admiral, and that between the *Chichester* and our headmost Ships was a Space left for a great Number of Ships, they being greatly extended, reaching almost to the foremost Ships of the Van of the Enemy's Fleet ; and soon after it is said, that the Rear-Admiral's straggling Division reached all the way from the Van of the Enemy's Fleet to the *Poder*, no less than the Extension of nineteen Ships : Where then is the Connection required by the first and seventeenth Articles of the Fighting Instructions to be preserved in a Line of Battle ? And where could have been the Order in engaging observed as directed in the thirteenth Article of the said Instructions ? And in what Manner could I have complied with Admiral *Mathews*'s Signal, which directed

ected nineteen Ships (for so many were there, inclusive of the *Marlborough*) to engage in Order of a Line of Battle Twenty-two of the Enemy, there being that Number inclusive of the *Real*? Was it expected by the Admiral that two or three of our headmost Ships were to engage eleven of them? Or what is more, was it expected that I should have gone down singly to them without the Ship a-head or astern of me first going? Neither of these Expectations ever yet appeared to have been thought of by Mr. *Mathews*, and I am sure his Signal did not imply it, that being a general one and under a general Regulation, therefore no farther relating to a Part, than as that Part related to the Whole; yet my Accuser says, I could have engaged in a Line. In a Line of Battle, if he means, I must then beg his Pardon; for as I have before observed, the Instructions make that to depend on Order and Connection: and therefore if he says I could have engaged, agreeable to the Signals abroad, which directed to engage in a Line of Battle, or that I could have formed, kept, and continued in my Station in the Line of Battle, I must beg Leave to contradict him. Or if the Line which my Accuser means to be understood I should have engaged in, be that of the next Ship to me towards the Center, according to his own Explanation in his Rejoinder to Admiral *Mathew's* Replies, and indeed

indeed the only reasonable Interpretation of that Admiral's Manuscript Addition to the first Article of the Fighting Instructions; then is it also plain, that I could not have engaged in a Line, as my Ship was not at any time farther from the Enemy than the *Nassau* was. But if yet there remains any Line which my Accuser would have had me placed myself in, independant of that which was kept by the next Ship to me, then must it be such a one as could not be comply'd with, but in contradiction to the Signal for the Line of Battle and the Signal for engaging.

For there are, I apprehend, two Things equally necessary to be regarded in forming and preserving of a Line of Battle; the former is a proper Distance, each Ship to keep from the other; and the latter a proper Line, each Ship to keep in with the other. When both these Things are exactly comply'd with, then must the Fleet be in a proper Line, and in a proper Disposition to engage the Enemy, who cannot, when to Leeward, whilst this Order and Connection is preserv'd, employ any superior Force upon us, but what must consist in the Difference of the Weight of their opposite Ships. But whilst either of these two Things are left to be done in any Part of the Fleet, that Part cannot engage the Enemy either in a Line of Battle, or with a sufficient or proportionable Force. To guard against which Disadvantage, the se-  
venteenth

venteenth Article of the Instructions, therefore direct, in engaging each Ship, to keep within half a Cable's length of the other. And of that Consequence does the Twenty-fourth Article make the preserving of a Connection in the Line to be, that there it is positively directed; upon only one Ship leaving of it, for the next to close up the Vacancy, that the Fire of the Enemy may be more equally shared; this Direction also serves very much to strengthen that Part of the seventeenth Article, which orders an equal Number of Ships to be employed upon the Enemy, and which does therefore, in Effect, require not to attack with a Force much inferior to them. And as the Ships a-stern did neither join the at the Distance, as directed by the Instructions, nor did the *Nassau*, or the Ship a-head engage the Enemy; consequently it was not in my Power to have engaged the Enemy either in a Line of Battle, or in the Order directed by the thirteenth Article of the Instructions: and therefore till I could engage the Enemy in that Line, and in that Order, I could not, consistent with the Signals then abroad, have gone down into the Line of engaging. Since then in my Situation the Signals did not direct me to engage, what was there to induce me to engage, that Mr. *Lestock* says I ought to have done it? For my own part I know of but three Reasons, that there can

can ever be for engaging : The first is, where either you have an apparent Advantage, or at least have not an apparent Disadvantage of the Enemy. The second is, in your own Defence, when attack'd by a superior Force. And the third, in the Protection of your Charge or Admiral, in the Defence of which you are to risque his Majesty's Ship. I know of no other Reason, unless it be Treachery ; and that sure Mr. *Lefstock* can never mean is a Reason for going down upon the Enemy : yet there was no other Reason, in my Situation, for going down to eleven Ships of the Enemy, that Number being unengaged at the time when the *Boyne* and *Chichester* were engaged, and when they were not, then were there thirteen. To me then there appeared no good Reason for my going down, but there were many for my not going : First of all, the Preservation of his Majesty's Ship, and what was more, the Preservation of my Rear - Admiral, and the Ships of his Division, all which would have been more exposed to the Enemy than they were, had I gone down, as the Force left would have been less able to have prevented their getting to windward and doubling ; which Mr. *Lefstock* says, and in that every body agrees with him, was what the French endeavour'd at. Yet Mr. *Lefstock* would have had me gone down ; and what is more, he would have had the Ship a-head of me, and the

the Ship a-stern, to have gone down also and thereby left the Rear-Admiral exposed to a Superiority he would not have been in the least Condition to have maintained himself against, any more than we should have against that we must have engaged; for had the headmost Ships of the *English Van* gone down to the headmost of the *French*, would not as many of their Line a-stern, as they had thought proper to have brought upon us, have had it in their Power to have engaged us, and the remaining Part of doubling upon our Rear-Admiral? Or had our headmost Ships gone down upon the sternmost of the *French* that were not engaged, would not their whole Line a-head have had it in their Power to have brought the Van betwixt two Fires? Was this then the Duty we should have done? Was the Rear-Admiral left with seven Ships, according to Mr. *Lestock's* Account, to oppose to nineteen of the Enemy, without any Prospect of Relief or Assistance from other than his own Division, Mr. *Lestock* being at a Distance, which he says made him unable to give it even to Mr. *Mathews*, much more to the Van of the Fleet? And would he have had the Ships a-head taken a Step which would have brought the greatest Part of that Force upon the Rear-Admiral? Was he with so small a Number of Ships to contend with the Enemy, and yet a Part of them, as it were, contrive to bring on his and their Destruction? And was this

to be done in strict Obedience to the Signals abroad, and out of a Pretence of endamaging his Majesty's Enemies give up his Majesty's Ships to them ? No, those Officers saw no Signals directing such a Conduct ; and as they knew what was their Duty to their King and Country, so had they a Spirit to act up to it, in Opposition to all the senseless Observances insisted on by Mr. *Lestock*. I call them so, as the eleventh and twelfth Articles of War, from which this Discipline is taken, directs no such Conduct as is here required : It is true, that the former of them enjoins Obedience to be paid to the Commands of the Admiral, as well for the assailing of the Enemy, as for whatever else he may direct ; but the Nature of that Obedience can only be judged of by the Order or Signal which commands it, and which describes under what Circumstances you are to perform the required Service, under which Description every Officer must conform himself to the Letter of his Instructions, as he must to that of the Order of his Admiral in the same manner. Farther Obedience than this, the strictest Discipline cannot impose, nor do the Instructions demand : On the contrary, to do the same thing under a different Situation from that which the Instructions or Order of an Admiral direct it to be done in, is, instead of complying with those Orders, to act in direct

direct Contradiction to them; therefore, as the Signals whilst they directed to engage, directed the Manner of doing it, the Direction consequently must be complied with in every Part, without which it is not to be executed. The twelfth Article of War therefore, which points out the Punishment due to an Officer who shall withdraw or keep back from the Fight, can only have Respect to such who in doing it neglect to pay Obedience to the Admiral's Signal, when they could have comply'd with it in the Manner he directed. And I think nothing demonstrates more fully that this Article cannot be otherwise applicable than the Article itself, the principal View of which, in directing to engage, is to take, fire, kill, and endamage the Enemy, and to assist and relieve all and every of his Majesty's Ships. As this is the View then of this Article, it cannot therefore be a Direction to engage the Enemy, when in doing it his Majesty's Ships must, instead of being relieved, be distressed, and when, instead of taking the Enemy, they must certainly be taken by them.

I have farther to observe, that if, when the Signal is made for engaging, every Ship that can engage is to engage, without regard to the Line of Battle, or the Order which is directed to be observed in engaging, then is the Signal for the Line of Battle, and the Order required in the thirteenth Article of

the Instructions, unnecessary and superfluous; and nothing remains to be observed, but this one Thing to be done, to fight where you can, and how you can, with ten Ships to one, or one Ship to ten; and thus, instead of Discipline, substitute Disorder and Confusion, the certain Fore-runners of Defeat and Disgrace.

Admiral *Rowley* is said and is acknowledged by me to have engaged, and this by Mr. *Leflock* is made use of as an Argument for my engaging; but I must beg leave to think differently from him, and in that I shall but agree with my Rear-Admiral, whose Approbation of my Conduct has been made known to this Court by my third Lieutenant; an Approbation that must have come from the Heart, as it was given on the Evening of the Action \*. He saw the Usefulness and Necessity of the Conduct of the headmost Ships of the Van, and therefore gave no Direction to alter it; which he most certainly would have done, had he seen Occasion, especially as the sixth Article of the Instructions particularly provides a Signal to be made by the Admiral, when he would have the Ships bear down in his Wake; which Signal Admiral *Rowley* did make

\* It appears upon the Evidence of Mr. *Spencer*, third Lieutenant of the *Warwick*, who was sent aboard of Admiral *Rowley* soon after the Action was over, that the Admiral said to him, that if every Ship had behaved as well as the *Warwick* and *Sterling-Castle*, we should have had a glorious Day of it.

make when the *French* tack'd the last time in the Evening. But till then he knew that so long as he with his Seconds engaged such of the Enemy's Ships only as were a-breast of him, that by their Weight he might hope to gain some Advantage of them; and that he did gain an Advantage is evident in this; that the *French* Admiral made sail a-head from him: and this Advantage, he knew was, and only could be secured to him by the headmost Ships preventing the Enemy from getting to Windward, and multiplying their Force upon him. And that the *French* did endeavour to get the Wind, and tack'd and stood towards our Fleet, appears upon Evidence; as also that our headmost Ships tack'd with them agreeable to the seventeenth and nineteenth Articles of the Fighting Instructions, and that they and the Enemy tack'd again before they came near the Length of any Part of our Van, that was lying-to; the Reason assigned for which by the *French* Admiral, is, because they must otherwise have led thro' the *English* Line, not being able to get to Windward of their headmost Ships, who wisely kept their Wind. And if it could be said by a disappointed Enemy, what at once speaks his Approbation, and the Service which the headmost Ships were of in guarding against an Advantage sought by the Enemy; sure as much might have been expected from an *English* Admiral? And

And as much, and much more was said by two English Admirals, Men whose Praises every honest Man values, and whose Censure only bad Men have to fear, they thought I did my Duty, and that Blows are not always the Praise of an Officer, but that Skill and Judgment in contending with an Enemy often-times does more effectual Service.

In the second Article of my Charge, I am accused of having acted contrary to the first, the thirteenth, seventeenth and twenty-fourth Articles of the Fighting Instructions; and as the remaining Part of the said Article of my Charge contains nothing in it different from the preceding one, only that I was a-head of my Station in the Line of Battle, and kept under Sail whilst the Rear-Admiral was lying-to, by which my Distance from him was increased; I shall not therefore trouble this honourable Court with a Recapitulation of it, but proceed to shew the false Application which is made of the before-mentioned Articles to me. But as there is not any one applied to any particular Neglect, but all of them following each other, and the Crimes also in the same Manner; I must therefore endeavour to point out the Neglect, against which each Article is designed to be placed: The first of which is, where it is said, that every Captain in the Line of Battle a-head is to observe and keep the same Distance those Ships do which are next

to the Admiral, always taking it from the Center. These are the Words in which Article is put down in my Accusation, not in which it is put in the Fighting Instructions; but that I shall pass over the Notice of the Application of it, which only have respect to my Station a-head. It appeared upon Evidence that I was in the *Sterling-Castle*, and a-breast of the my's second Ship; and that this was proper Station a-head, I appeal to the next Article of the Fighting Instructions, which says, If the Admiral and his Fleet be before Wind of the Enemy, and they have stretched themselves in a Line of Battle, the Van of the Admiral's Fleet is to steer with the Van of the Enemy's, and there to engage them. And, as the Situation here described was the same of the two Fleets, in respect of our being to Windward, and their being stretched in a Line of Battle; and that was also the same with that of the French Fleets of *English* and *Dutch* under the Command of the Earl of Torrington, and the French in 1690, who, in his Account of the Disposition of the two Fleets, observes, that the Enemy was to Leeward; he then ordered the Signal for Battle, so that the *Dutch* steering as he did; following the Articles of the Fighting Instructions, the Signal is made, the headmost

' Ships are to steer away for the head  
' of the Enemy.' Those are his Words.

I think out of all Dispute the Meaning of the nineteenth Article; therefore, if the first Article is brought to shew that I was a-head of my Station, it cannot shew it in that Situation, unless the Articles contradict one another, which most undoubtedly is not the Case ; the one only directing a general Method to be observed in forming a Line, without having any respect to the Enemy or their Situation ; and the other commanding a certain Conduct to be observed by the Fleet, when ours and the Enemy's are in a Situation that answers to that Description ; which if it had been executed, would have brought our Fleet to have joined me in my Station, and thereby enabled the whole Van to have engaged the whole Van of the Enemy agreeable to that Instruction. And what puts it out of all doubt, that the nineteenth Article is to be had regard to in the Situation I have described of the two Fleets, and the first Article to be subservient to it, is, That if the first was wholly and only to be regarded, and every Ship to take the Distance from the Center on to the Van, that then the nineteenth Article would be no Direction to the Van at all, as they must wait to be pushed on by the sternmost Ships before they would reach the Head of the Enemy's Van ; and therefore they might either not reach it at all, which is a Contradiction to the nineteenth Article ; or if they did reach it, it would be in Consequence of their being so pushed on, and

and in that case the nineteenth Article would be unnecessary : Consequently, if it is of any use at all, (as sure it is, and of equal importance with any Article of the Fighting Instructions, as it has particular regard to the securing the Enemy from getting the Wind) then is it to be attended to, and the first Article in Conjunction with it ; that is, every Ship is still to pay Attention, from the second in the Van towards the Center, that they do not close too near the Van, and thereby leave the Center, or the Rear quite uncovered, by not measuring aright the proper Distances, each Ship should keep from the other to spread the whole Line of the Enemy ; which I apprehend is ever to be done, when your Numbers are sufficient to do it, as the Van, if it was not to go to the Head of the Enemy's Line, would shut out the Rear of our own Fleet from the Action ; and as I have just now mentioned the Earl of Torrington, in regard to the Battle off Beachy-Head, I beg leave here to take Notice, that tho' his Fleet was not sufficient to spread the Line of the Enemy, that he chose to cover the Van and Rear, and leave the Center open, to guard against the Danger of the Enemy's getting the Wind.

And if it be yet urged, that, as Rear-Admiral Rowley with Part of his Division, did not keep up with the headmost Ships, that therefore they ought not to have gone so far a-head as they did ? I reply, that as

the nineteenth Article of the Instructions is a particular Direction to the Captains in the Van to steer with the Van of the Enemy ; and, as neither Admiral *Mathews* or Admiral *Rowley* did make any Signal to divert them from pursuing the Execution of it ; that therefore they could not be justified in acting otherwise than they did ; more especially as the Fighting Instructions make all the different Motions of the Fleet to proceed from the Commander in Chief, and do not at any time direct the Attention of a Captain to those of an Admiral of a Division, but where a particular Signal is given from the Commander in Chief concerning his particular Division. In all general Signals there are general Regulations pointed out, without any Conditions in reserve to dispense with them ; and therefore those who are the first Movers in order to their Execution must proceed in their Duty till called off by an Order, as binding, and as express as that which they proceeded upon, or otherwise they must stand guilty of Disobedience, which nothing but the good of the Service can ever justify ; as I must have done, had I remained with Admiral *Rowley*, since I could not then have produced any Warrant from the Instructions that would have authorised me in the Breach of the nineteenth Article. And therefore the fatal Consequences that would have followed from the Van's lying-to with Admiral *Rowley*, would

would have been aggravated by the Guilt of Disobedience ; and a Disobedience of such a Nature, as would have then indeed laid me open to an Attack from Mr. *Lefrock*. But I believe, in respect of my present Charge of Disobedience, that I am the first Officer that ever was brought to a Trial on the Presumption of it, after being acquitted by his Commanding-Officer, and his Accuser having declared his Conduct in every respect the most conducive to his Majesty's Service. I have hitherto seen, that where an Officer has conducted himself with more Advantage to his Majesty's Service than if he had followed his Orders he could have done, that he has met with Applause, instead of Blame, from his Commanding-Officer ; no Conduct like that being esteem'd a Disobedience of Command, that produces Good, and prevents fatal Consequences to the Service. For, as on the one hand, if the Admiral sees not his Situation, therefore his not knowing of the Necessity of his Conduct, is his Excuse for acting a different Part ; and if he does see it, and does not call him off by a Signal or Order from the Service he is pursuing of, it is a Reason, from the apparent Advantage he has in view, for him to conclude, that what he is about is approved by his Admiral ; and therefore had not the headmost Ships been authorised in their Orders, in leading on when the *French* did, yet I flatter myself they would have been

thought justify'd, by this Court, in doing it, as I am confident they now will, in having both at one and the same time complied with their Orders, and acted most for his Majesty's Service; and that no Breach of Orders will be imputed to them for having only executed them as far as was their Part, and as was in their Power to do.

The next Article I am charged with the Breach of, is the thirteenth, which is, I suppose, on account of my not engaging. But since that Article directs Order to be observed, as the Condition of engaging, which Order was not in my Power to have complied with, and engaged, as the *Nassau*, which by that Order was to engage the next Ship to me, did not engage; and as the Signal at that time was also out for the Line of Battle, which was impossible for me to have engaged in likewise; Besides, that in engaging, the seventeenth Article expressly directs an equal Number of Ships to engage within half a Cable's length an equal Number of the Enemy, which would have been so far from my Case, that I must in the first place, have engaged with my single Ship, at least ten times my own Force; and, instead of being at the Distance of half a Cable's length from the next Ship to me that engaged, I must have been at a Distance, which was that of the second Ship of the Enemy to the twelfth, admitting the *Boyne* and *Chichester* to be engaged, therefore to have done in  
my  
adgnote

my Situation what the Instructions direct to be done in another, would have been so far from complying with them, that, as I have before said, it would have been to have acted in direct Contradiction to them: And he, who, when a general Signal is given, which is to be executed under a general Regulation, takes upon him to execute it by Parts independent of that Regulation, does, instead of performing the Service for which the whole was only sufficient, and for which the whole was therefore directed, unwarrantably give up an Advantage to the Enemy, by engaging them with a Force far inferior to them, and far inferior to that with which he was directed to engage. And here I think it not improper to shew the Agreement of my Accusers own Words to the Discipline I have been speaking of, and the Disagreement of them to his Charge against me. In his Rejoinder, after saying, that he haul'd down his Studing-Sails to let the *Torbay* come up into her Station according to the Order of Battle, Admiral *Mathews* prescribed. He declares himself in the following Manner.

' Neither do  
 ' I apprehend, says he, that, as soon as this  
 ' Signal appears abroad, it is a Justification,  
 ' or an Authority to any Officer to break  
 ' the Line while the Signal for the Line of  
 ' Battle is kept out, and to engage the En-  
 ' my in Disorder and Confusion.' No, he  
 goes on to say, ' My Understanding teaches  
 ' me, that this very Article binds every Offi-

cer

'cer to engage the Enemy in the Order the Admiral has prescribed unto them.' And does he say this? And is he so strict and nice a Disciplinarian, that with eleven Ships in his Division, and only one of them out of her Station, that till she was got up into it, he thought himself not justified in making Sail to engage four of the Enemy? Is this the Sense of what he says? and does this *Martinet* at one time spin his Discipline to that Cobweb Fineness, and at another break thro' all its Bounds, in requiring of me with one poor Sixty Gun-ship, in direct Breach of that Discipline, to have gone down upon ten or twelve Ships of the Enemy, without waiting for the Ships a-stern first to come and join me? Surely if Discipline was ever to be regarded, it was in a Situation like mine; and if ever it was to be dispensed with, it was in a Situation like his; and how properly, as Commanding Officer of a Division, in Strength much superior to twice the Force of the Enemy, the thirteenth Article of the Instructions, which supposing no such Disparity, therefore directs Order to be observed in engaging, can be applied to Mr. *Leflock's* Situation, I shall not presume to determine; I have only to observe, that whether it can with the least Propriety be applied to him, it must however with the greatest be applicable to me. And if several of the Captains of the Ships in his Division a stern, who are Men of high Credit and Character have declared, that they could

could have engaged the Enemy and did not, because the Ships a-head of them did not engage, and therefore they could not engage in Order and in a Line of Battle, agreeable to the Signals; I say, if Men of Service and Experience were bound by such Considerations, surely those Reasons were, at least, as strong for my Conduct in the Situation I was in.

The Article next to be mentioned is the seventeenth, which I suppose relates to the Distance I was from the Ships a-stern of me, and my keeping under Sail and increasing it; the first Part I have already answered; and to the second I reply, that I could not have kept my Station without it. Besides, there was no Signal from the Admiral to bring to; nor did he bring to.

The last Article in this of my Charge is the twenty-fourth of the Instructions, and relates to a Ship leaving her Station, which that I did not do, I doubt not of having convinced this Court of; and therefore in that Case, there was no necessity of sending to my Flag Officer. But had I remained in the Station my Accuser places me in, and instead of keeping under Sail have laid-to: In what Manner then could I upon his own Principles have engaged the Enemy? And how can he reconcile that Part of my Charge to what he says in his Recapitulation, where he admits, that only three of the French were engaged,

engaged, the rest leading on to gain the Wind of us? And in his Account of the Engagement, he says that Admiral *Rowley* was engaged with Monsieur *De Court*, whose Ship was the third from the French Rear; and consequently, by the former Account, the headmost that was lying-to. How was it possible then for me, who was the fourth Ship a head of Mr. *Rowley*, to have engaged the Enemy, whilst they were keeping under Sail, and I lying-to in my Station. I might also add, that if both our Fleet and theirs had continued lying-to, I could not then have engaged the Enemy in the same Line of Direction in which Admiral *Rowley* engaged them, as the Line of the Enemy was a curved one, which removed them at a far greater Distance from me than they were from the Admiral; consequently, to have engaged, I must have gone down into the very Bosom of all their Fire, and out of any Admiral's Line. Thus whilst he accuses me of not engaging in my Station, he must know that it was not in my Power; as also, that to have continued in the Station he appoints me, would have served no other Purpose than to have given the Enemy the Advantage of the Wind, an Advantage which Mr. *Lefèvre* in his Recapitulation says, every good Officer will endeavour to obtain, and be cautious of losing. Why then is he dissatisfied with me for Securing of it? *In*

In the third Article of my Charge I am accused with a Breach of the twenty-second and twenty-fourth Articles of the Fighting-Instructions. Of the twenty-fourth, in not going down to close the Line of Battle with the Rear-Admiral, between whose Ship and mine, were the *Boyne*, *Chichester* and *Nassau*, which Ships are said not to have kept their Stations, but to Windward of the Line. And of the twenty-second, in not engaging in my Station, or going with my Ship to the Assistance and Relief of the *Barfleur* and *Princess Caroline*, which Ships are said to be hard press'd, and in danger of being taken or destroyed by the Superiority of the French Squadron; all which I am said to have seen, and could, but did not relieve them.

The first Expectation mentioned in this Article, That of going to close to the Line, has something in it so extravagant, and the Article of the Instructions brought in support it, is so unapplicable to my Situation, that if the other part of my Charge in this Article of it was not still more extraordinary, I should have much more wonder'd at this than I now do. That it was my Dury to have gone down and joined Mr. *Rowley*, in Contradiction both to the Signal for the Line of Battle a-head, and the nineteenth Article of the Instructions, and without any Signal being made by him for the Ships between him and me, each of which were of greater

Weight than mine, and had suffered by engaging no more than mine, is what I do not in the least comprehend; and is what, I am sure, the twenty-fourth Article of the Instructions does not enjoin, it having only respect to a single Ship's leaving her Station from Distress. Those Ships had never left their Stations; for by Mr. *Lefstock's* Account, they never were upon them; or if they had, and left them, then would it have been with the Ships a-stern, to have joined me, both because it is impracticable in a Line of Battle for the whole Fleet a-head to close the Line by backing a-stern; and as it must be for ever an Advantage to keep up to the Head of the Enemy's Line when to Windward of them, instead of leaving them with a length of Line of many Ships to gain the Wind of us. But the reason for my going down, is to have given Relief and Assistance to the *Barfleur* and *Princess Caroline*; tho' it is said I might likewise have given it them by engaging in my Station, and that I ought to have done it.

Here then at one Time is two Services expected from me, both of which could not be executed; and at the same time I am directed to do one, which would have been to have acted in Contradiction to what my Accuser requires of me in the first Part of my Charge in this third Article of it. There I am required to have joined my Rear-Admiral,

miral, and here I am told that I should have engaged in my Station, or I might have gone down; either of which would have assisted or relieved the Rear Admiral, pretty much alike, I believe indeed: But if I had done either, would not he have said I did wrong? And if he can now bring the Fighting-Instructions to his Aid, to support this loose contradictory Charge, how much better would they then haue served his Purpose, when, instead of resting the Sense of some, and curtailing of others, he might haue fairly and above-board introduced them as they are? I have till now taken little notice of this unfair, this unofficer-like Proceeding of my Accuser; but I cannot pass over this purpose-serving Omission of the very Middle of the twenty-second Article of the Fighting-Instructions. The Article in its full Extent is: If any of the Ships in the Fleet are in Distress, and make the Signal, which is a West with the Jack or Ensign, the next Ship to them is strictly required to relieve them. Which Article he expresses thus: If any of the Ships in the Fleet are in Distress, the next Ship to them is strictly required to relieve them. Thus, first of all, he makes a long Artt. to come at, and place the, the next Ship to the Parfleur; and then supposing, or rather saying, that I saw that Ship in Distress, he puts the two Ends of an Article together, to shew I was guilty of a Breach of the

Whole of it, leaving out the middle Part, which describes the Circumstances under which it is required to be obey'd, as well knowing he was not able to shew those Circumstances to have happen'd. I thank God I am able to discover the Impositions and Artifices of my Accuser; but if I was not, what might have been the Consequence? I am sure no Man has a higher Opinion both of the Judgment and Justice of this honourable Court than myself, yet the little time that is taken to determine on the Fate of an Officer brought before them, and the dark Disguise which my Accuser has thrown over his Charge, makes it not only possible, but also probable, that if I had not from a length of Time been able to take that Disguise off, I might have stood before this Court, and in the Opinion of the World, as a Wretch who only mindful of his own Preservation, refused to give Assistance to his Admiral, when he required it of him: Yet however a Wretch I might have been, had that been the Case, or however deserving of the severest Punishment, nevertheless could I as soon have acquitted that Behaviour to my Conscience, as where I had been the Author of an evasive Cheat, by which the Suffering of an innocent Man had been procured.

It is true that the twenty-second Article of the Instructions directs the Ship next to another

other in Distress, to assist her when she makes the Signal ; and it is also true that Mr. Rowley, nor any Ship in his Division, did make that Signal, nor was there the least Appearance, that I saw of his Ship, or the *Princess Caroline* being in Distress ; on the contrary, they drove the French Admiral and his Second away from them. What then was there to induce me to go down and join him, when I neither was the next Ship to him, nor did he make any Signal ? And in what manner could I have assisted him so effectually, as by keeping the Enemy from him, which was answering a Purpose engaging could not have done. And will my Accuser say, that I did that with a View only to my own Security ? How then will he account for my Behaviour in the Evening, when I went down to shelter my Admiral from the Fire of the whole French Fleet, which was in their Power to have pour'd on me ; and which Danger, if I had only been mindful of myself, I might have avoided by keeping to Windward of them \* ? But as my Motive, for keeping the Wind before, was to secure the Safety of my Rear-Admiral, and the Ships in the Van from the Enemy ; so when I found that their whole Force was coming upon him, and that he had made the Signal for the Ships in

his

\* To the Truth of which, many Evidences have made Oath.

his Division to bear down in his Wake, I no longer kept my Wind, but, as I thought it my Duty, went down and opposed myself for the Admiral's Preservation, to the Enemy.

The fourth and last Article of my Charge is made up with an Accumulation of the Breaches of Discipline I have been guilty of; and concludes with saying, that I was one of the principal Causes of the Miscarriage of his Majesty's Fleet: which if it be found by this Court to be true, then, instead of Favour, do I make it my Request to them, that they will pronounce a Sentence against me more severe than ever yet was pronounced on a Criminal: Or, what is more, that if instead of being a Principal, or the least part contributing to the Miscarriage, I am not found, on the other hand, to have been a Means of preserving his Majesty's Fleet from a greater Miscarriage than it would have met with, had I pursued the Conduct my Accuser says I ought to have done, I desire to be treated in the same manner. And farther, I doubt not, that not only my Conduct will appear to this Court more for his Majesty's Service than any other I could have pursued, but also that it was much more conformable to the Orders of the Instructions and the Articles of War; all which are calculated solely with a View to his Majesty's Service, and therefore never can be brought to support a Charge

Charge like mine, which is destructive of it, but by the grossest Misconstructions and Misapplications of them, which however artfully made, are nevertheless easily discover'd by the Opposition and Inconsistency they must stand in, either to the other Articles or the Article itself. Thus when my Accuser brings the first Article to shew me a-head of my Station, it is plainly proved by the Nineteenth that I was in it. And while he employs the Thirteenth Article against me for not engaging, I am directed both by that, and the Seventeenth, as well as the Signal for the Line of Battle, not to engage in my Situation. Likewise the Parts of the Seventeenth and Twenty-fourth Articles he makes use of, are equally misapplied to my Situation, and therefore stand opposed both to themselves and the Nineteenth Article. And the Parts of the two last Articles, which are the Twenty-second and Twenty-fourth, are not only misapplied to me, but the Sense and Meaning of them entirely destroy'd; and therefore they stand opposed both to themselves, the Signal for the Line of Battle, and the Nineteenth Article.

This then, I doubt not, will be found by this Court to be the Nature of my Accuser's Charge. A Charge which the Narrative itself, a Book generally thought to be wrote by Mr. Defoe, so eminent a good fellow, as well in what relates to my Indulgence of Disobedience,

Disobedience, as that of the Miscartage, since nothing can be more contradictory to the Charge against me than the Discipline there laid down: for as a Line of Battle is there described to consist in the Closeness as well as Straitness of it, and these Reasons given for it, that at all times every Ship may be ready to sustain, relieve, and succour one another: And as this Line in fighting is there also said not to be dispensed with upon any Consideration: And as it is soon after said, that the Order of Battle given and signed by the Admiral, which shews the Station of each Ship, is an express Order not on any Pretence or Motive to be violated; neither is the sailing or fighting Instructions, which latter are to enforce Obedience to the Order of Battle, including Signals, to direct Ships to keep or get into their proper Stations; and that among many other Articles, which entirely contribute to the Support of this Discipline and Order, it is directed that each Ship in the Line of Battle shall keep within half a Cable's Length of one another: Also, that if his Majesty's Fleet should have the Wind of the Enemy, the Van shall steer with the Van of the Enemy, and there engage them; by which means every Ship knows her Adversary, and from the foremost in the Van to the Rear attack them successively; which is observ'd to be an admirable Article to preserve the Order and Discipline of the Fleet:

I say, that consistent with this Discipline I was to have steer'd, as I did, with the second Ship of the Enemy, and if on no Pretence whatsoever I was to have engaged out of the Line of Battle, and the Order of it as given by the Admiral ; and that the Line of Battle be what the Narrative says it is, a close connected Line of half a Cable's Length distance each Ship from the other ; What Article, or what Discipline can be brought to shew either that I was out of my Station, or that I should have engaged ? And as the Discipline of the Author of the Narrative is so favourable to me, so are many of his Expressions also which relate to my Conduct, and the great Importance of preventing the Enemy from getting the Wind of us ; which as they are too many to enumerate here, so if the Author could have foreseen or known, at that time, the Intention of my Accuser, he would probably have been more sparing of them, as they, together with his Discipline, serve to confound the Charge laid against me.—A Charge in which all Order, all Conduct, and the good Effects flowing from them, even to the preserving of his Majesty's Fleet, are treated in me as criminal in paying regard to them ; and instead of attending to the Preservation of the Fleet, it is required of me to have contributed all in my Power to have brought it into the greatest Danger and Distress : An Expectation I must own I have not answer'd,

Looking upon my Duty to my King and Country in a different View, and always holding that Man alike contemptible who shews a ridiculous ill-timed Courage, with him who shews an unmanly Want of Bravery. Conduct and Resolution are the two Things look'd for in an Officer; the first, I flatter myself to have shewn in not going down upon the Enemy at a time when nothing less could be expected than the Loss of my own Ship, and endangering Admiral *Rowley's*, with other Ships of his Division, without any Advantage in Prospect to ballance against it. And the latter, I think, I did not appear to want, when I went down to cover my Admiral from the Enemy, thereby exposing myself to as great Danger as a Ship can ever be exposed to, when by keeping to windward I might have avoided it. This, and every other Part of my Behaviour, Admiral *Rowley* either saw or knew; which as he was pleased to approve, therefore have I hitherto had reason to be satisfied with it; and the more so, as I never yet have heard of any Men of Candour and Sincerity that have not agreed with him in the same Opinion of it.

But such, Sir, is the difficult Task of an Officer's Duty, that how well soever he may perform it, or however great the Applause he may meet with from his Admiral, and the World on that Account, yet is it not sufficient to secure his Conduct from the Attack  
of

of designing artful Men, who can as easily bring the Instructions to support the most pernicious, as to condemn the most useful Conduct. But still more mortifying is it, when such Men have sufficient Weight to have their scandalous Complaints grounded not on Measures destructive to the Service, but on such as were productive of the Good of it, only tallying not with their false, or rather occasional Interpretations of Discipline. I say, Sir, it is a mortifying and discouraging Circumstance to an Officer whenever a Service has in it such Men, who from their high Rank and Station can obtain the Privilege of bringing an Officer to his Trial upon these Principles. And so fatal and so injurious to the Service may be the Consequence of it, that Officers may be kept from doing what is plainly right and proper to be done, if their Orders which related to another Situation, can be brought against them under a different one.—Thus should an Admiral, in consequence of his Intelligence, detach three Ships of his Squadron to go in search of, and attack three of the Enemy, and the senior Officer when he comes upon the Station he was directed to, discovers not only those three, but four times that Number, he may be left under the Dilemma of knowing not in what manner to act, tho' he should know that if he attacks them, not only his three Ships will be destroy'd, but the Force of the

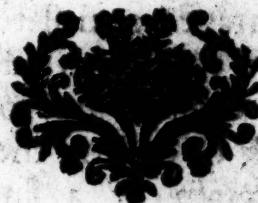
Enemy will after that be sufficient to destroy his Admiral also. But tho' the Conduct of this Officer should even be judged by some to be right in engaging, yet I must beg leave to observe, that there are two stronger Circumstances in favour of my Case than that I have mention'd.—First, that I cannot be look'd upon in the light as commanding Officer in respect of the Line of Battle, for in my Situation I could only follow, and not direct the Motions of the two other Ships.—And lastly, the Orders being limited to such Circumstances in their Execution, as plainly and expressly directed them not to be done in my Situation; whereas, in the other Case, the Orders are silent, and without any express Prohibition being annexed to them, but what is imply'd in the Reason of the Thing.

But in what manner both that Officer, as well as myself, under the Circumstances I have described him, and those which I was in, ought to act, the Judgment of this Court has, I presume, most fully determin'd in the Sentence of Captain *Williams*, in which, after taking notice that upon the headmost of the four *Spanish* sternmost Ships coming up, the *Royal Oak* bore down to engage her, as also the second and third of those four Ships, till she had the Fire of the three first, if not of all the four upon her, and then she haul'd off; the Court on which are pleas'd to declare, that when the headmost of the four Ships

Ships was got a-breast of her, that considering the *Royal Oak's* Situation, Captain *Williams* did his utmost, from that time, to annoy and endamage the Enemy; and consequently they pronounce him to have done the Duty of an Officer in hauling off from so superior a Force: How glaringly then this Determination of the Court strikes upon my Accuser's Charge against me, is evident in this, That if I had gone down alone to have engaged the Enemy with my single Ship, I must have fought with almost the whole *French Fleet*; and if the Ships whom I could only have expected Assistance from, had also gone down, we must each of us have engaged an equal Number of the Enemy with that which Captain *Williams* prudently withdrew from, when he found Mr. *Lefstock* did not give him the Assistance he might with the greatest Reason have expected from so great and so superior a Force to the Enemy as that he had under his Direction, and from which Hopes Captain *Williams* was plainly from the Event encouraged at first to go down.— I only beg leave farther to add, that as the Orders of every Captain are to endeavour to take, burn, sink or destroy the Enemy; that therefore a Captain of a single Ship who avoids a Squadron of ten or twelve Ships of the Enemy upon meeting them at Sea, has not so good a reason for not attacking them as I flatter myself this honourable Court will think

think I had for not engaging the same Number : the Case would be parallel, had I acted different from my Orders ; but as it stands, I should have broke my Orders had I engaged them, as the Person in the Situation I have described does not comply with his in not engaging.

I shall not now take up any longer the Time of the Court than whilst I make my Apology to them, for having already taken up so much of it ; which I should not have had Occasion to have done, had the Charge against me been less false and scandalous, which I flatter myself will appear to them sufficiently such as to excuse me to them for having trespass'd so long upon their Patience.



At a COURT-MARTIAL held, by Adjournment, on board his Majesty's Ship the PRINCE OF ORANGE, at Deptford, on the 9th, 10th, 11th, 12th, and 13th, of December 1745.

## P R E S E N T,

SIR CHALONER OGLE, Admiral of the Blue, and Commander in Chief of his President, Majesty's Ships in the Rivers Thames and Medway, and at the Buoy of the Nore; Perry Mayne, Esq; Capt. Miles Stapylton - Admiral of the Blue.

Capt. William Chambers. Hon. Edward Legge.

Thomas Frankland. Sir William Hewett.

Charles Colby. Sheldrake Laton.

Joseph Hamar. Sir Charles Molloy.

Smith Callis. Robert Erskine.

John Pitman. Charles Catford.

George Elliot. William Gordon.

All duly sworn, according to Act of Parliament.

The

The Court (pursuant to an Order from the Right Honourable the Lords of the Admiralty to Sir Chaloner Ogle, dated the 11th of September 1745.) proceeded to enquire into the Conduct of Captain *Temple West*, who commanded his Majesty's Ship the *Warwick*, at the time of the late Engagement between his Majesty's Fleet, and the combined Fleets of *France* and *Spain*, off *Toulon*; and he was tried for the same, upon a Charge exhibited against him by the Prosecutors in behalf of the Crown: And the Court having examined the Witnesses produced, as well in Support of the Charge, as in Behalf of the Prisoner, and heard what the Prisoner had to offer in his Defence, are unanimously of Opinion, That the Charge against Captain *West*, for Disobedience to part of the First, Thirteenth, Seventeenth, and Twenty-fourth Articles of his Fighting Instructions, has been made good by the Evidence in Support of the said Charge; and that he falls under the Eleventh Article of an Act of the 13th of *Charles II.* for establishing Articles and Orders for the regulating and better Government of his Majesty's Navies, Ships of War, and Forces by Sea; and the Court do unanimously adjudge him, the said Captain *Temple West*, to be cashier'd from his Majesty's Sea-Service,

Service, and he is hereby cashiered from his  
Majesty's Sea-Service accordingly.

*C. Ogle,*  
*P. Mayne,*  
*M. Stapylton,*  
*Wm. Chambers,*  
*E. Legge,*  
  
*Wm. Hewett,*  
*Char. Colby,*  
*Sheldrake Laton,*

*Jos. Hamar,*  
*C. Molloy,*  
*Smith Callis,*  
*R. Erskine,*  
*J. Pittman,*  
*Char. Catford,*  
*Geo. Elliott,*  
*Wm. Gordon,*

*Cha. Fearne, Ju. Ad.*



**H** E R

## REMARKS upon the SENTENCE.

This Sentence, as it pronounces me to have disobey'd only Part of the First, Thirteenth, Seventeenth and Twenty-fourth Articles of the fighting Instructions, and as the Court has brought me under no other than the Eleventh Article of War, which is the general Article provided to punish Crimes of Disobedience of all Sorts whatsoever, so consequently all other Parts contained in my Charge, not mentioned in my Sentence, I stand acquitted of by the Court; as first, that of withdrawing or keeping back from the Fight, which if I had been found guilty of, the Court must have brought me under the Twelfth Article of War, as they must if I had not done my utmost, as far as my Station would permit me, to take, fire, kill, and endamage the Enemy; or to assist and relieve all and every of his Majesty's Ships. These Expressions, or to the same Effect, being such as are used in the Charge against me, and which are included in the Twelfth Article of War; which Article, as it is not mentioned in my Sentence, I must, as I have already observed, be acquitted by the Court of every Part contained in it; and therefore, of every Part of my Charge which is contained in that, or any other Article, not mentioned in my Sentence, either of the fighting Instructions, or the Articles of War, and as the

the Court have not pronounced me to be either a Principal, or a Part of the Cause of the Miscarriage of his Majesty's Fleet, consequently my Behaviour is admitted by them to be at least as promotive of his Majesty's Service as if I had conformed myself to the Obedience of the Parts of those Articles they declare me to have disobey'd; for if by obeying them I could have done better Service than I did, I must have stood in that Degree a Cause of the Miscarriage in having neglected the Performance of it. As my Charge then makes me a principal Cause of the Miscarriage, and as my Sentence does not pronounce me to be either that, or a Part of it, it follows, that the Nature of my Crime is, by the Sentence of the Court, wholly a Disobedience to the Part of each Article they bring me under, without any ill Consequence resulting from it.

In order then to fix Disobedience upon me, both these Things must be made to appear; first, that I was directed to do what I did not; and secondly, that it was in my Power to have done what was directed. I shall not at present contend for this first Point; but admit that I was directed by the first Article of the fighting Instructions to keep the same Distance a-head from the Ship, which, according to the Method given to each Captain, I was placed next to, as those Ships did which were next the Admiral, always taking it from the Centre; and I do

also admit that I could have kept that Distance from the *Nassau*, which was the Ship I was appointed, by that Method, to keep next to and a-head of. Supposing then the First Article to be executed in my having kept close to the *Nassau*, in what Manner could I have executed the next, which is the Thirteenth, consistent with it? since the *Nassau* is said by all the Evidences to have been considerably to Windward of the *Chichester*, and farther from the Enemy; and the *Chichester* is allowed not to be within point-blank Shot of the Enemy, when in a Line with the Rear-Admiral, on account of the curve Line kept by the *French*. Consequently whilst I remained with the *Nassau* I could not engage the Enemy; and if I had left the *Nassau*, and gone down into a Line with Admiral *Rowley*, I must then have broke the first Article, and not have been able to have executed the Thirteenth, both because it is a Direction to engage in the Order the Admiral has prescribed, by which my Station in engaging, agreeable to that Order, must have been with the *Stirling Castle*, at half a Cable's Length right a-head of me, and the *Nassau* that Distance right a-stern of me, which, in their different Situations, was impossible. And therefore the Part of the Seventeenth Article, which I am charged with the Breach of also, could not have been complied with in engaging; but as, according to the Law of War, I might

cording to the present Discipline, Forms are but little insisted upon in engaging, it may therefore be expected that I should have dispensed with them: And though I could not engage whilst I continued to pay a strict Regard to the First Article, or the Part of the Thirteenth or Seventeenth, that require Order, and a certain Distance to be kept in engaging, yet nevertheless I should have gone down in Opposition to those Articles, and engaged in a Line with the Rear-Admiral. Whilst this Discipline is insisted on, I must at least be acquitted of not complying with the Part of each of the other Articles before mentioned, together with the Part of the Twenty-fourth, which relates to a Ship leaving her Station, and which with the other I am declared to have disobeyed: On the other hand, if these Forms were to be had Regard to, then I must be acquitted of not engaging without them. But however, whether those Forms were to be regarded or not, it is very certain, that in a Line with my Rear-Admiral I could not have engaged the Enemy whilst they laid to at the Distance of point blank, or perhaps within random Shot; and if I had engaged them out of point blank, I should then have broke the Twentieth Article of the fighting Instructions: why then the Court have thought proper to declare me Guilty of Disobedience to Part of the Thirteenth Article I know not. For without calling upon the

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Evidences to prove that I could not have engaged the Enemy whilst they were laying to within point-blank in a Line with Admiral *Rowley*, the Sentence itself proves the Court to be of that Opinion ; for, if by the Thirteenth Article I was directed to engage, but did not, though it was in my Power to have engaged in my Station in the Line within point-blank, it would have then appeared to the Court that I withdrew, or kept back from the Fight, and did not do my utmost in my proper Station to take, fire, kill and endamage his Majesty's Enemies ; and therefore I must have fallen under Part of the Twelfth Article of War for the same Neglect, (in the Opinion of the Court I am sure I only speak ;) which the Captains who have hitherto fallen under their Censure have been brought, either then by my being found guilty of Disobedience to Part of the Thirteenth Article of the Instructions, must be meant, that as that Article directed to engage, and I did not, that therefore I disobeyed it without any Regard being had to whether I could have engaged in my proper Station or not ; or it must imply, that if I could have engaged, it would not have served these Purposes (the only Purposes engaging can serve) either to take, fire, kill, or endamage his Majesty's Enemies. The Nature then of my Disobedience to the Part of every other Article, excepting the First and Twenty-fourth is

not that of having neglected to do what I was directed and could have done, but it is that of not having done what the Instructions directed, which was not in my Power to have performed. But as in my Charge there are two Parts of the Twenty-fourth Article mentioned, and in my Sentence only one, it may therefore be necessary to clear up which of the Parts I am said to have disobey'd, that it may appear whether I could have complied with it or not. The First Part is a Direction that no Ship shall leave her Station; and as in my Sentence I am declared to have disobey'd the Part of the First Article, which must be on account of my leading on at some Distance from the *Nassau*, therefore this Part of the Twenty-fourth Article has plainly a Relation to that, in the same manner that the other Part of the Twenty-fourth has to the Twenty-second Article, which is to close the Line, and thereby give Assistance to the Ships with whom you close it. And therefore as the First Part of the Twenty-fourth Article is joyned, in the Second Article of my Charge, to the Part of the First, in the same Order as it stands in my Sentence; and as the other Part of the Twenty-fourth Article is joyned with the Twenty-second (which precedes it), in the Third Article of my Charge, which Twenty-second my Sentence does not declare me to have disobeyed; and as besides the Captains *Ambrose*, *Williams*,

liams, Pett and Slater, were in like Manner charged of not closing the Line, but acquitted in their Sentences of it, though they might equally have done it. But the Court did not require it of them in their Situation, and therefore cannot in mine. The two former were, had it been their Duty, to close a-head from a stern, and the two latter from a-head to a-stern; which shews the contradictory Discipline required to be perform'd, as walking backwards instead of forwards shews the Absurdity of closing the Line from a-head to a-stern; which of itself would have been sufficient for me to conclude, that the First and not the Second Part of the Twenty-fourth Article was meant to be applied to me in my Sentence, even if it had appeared by the Evidences (which it is very far from) that I could have gone, and have been in a proper Station between the *Boyne* and the Rear-Admiral. But what puts it out of all doubt, that the Second Part of the Twenty-fourth Article was not meant in my Sentence, is, that if it had, I must have fallen on account of the Disobedience to it, under every Part of the Twelfth Article of War. Upon the whole then it appears, as well in regard to the Part of the Thirteenth, Seventeenth, as the second Part of the Twenty-fourth Article of the Instructions, that the Sentence cannot fix with any Consistency either to the Article of War, it brings me under the Part of

of the First and Twenty-fourth Article of the Instructions I am required to have obey'd, or to what has been deposed by the Evidences, the Censure of Disobedience upon me concerning those Articles; neither can it to any Part of the Thirteenth Article, consistent with the Instructions, or their former Sentences, even when the Order required in it to be observed in engaging is separated from it; and the Part of the First, Seventeenth and Twenty-fourth Articles dispensed with. For even then in a Line with my Admiral I could not have engaged at the Distance of point-blank; and as the Thirteenth Article could not be obeyed by me, so the Part of the Seventeenth which is connected with it, and relates to the Distance to be kept in engaging, consequently loses its Force. All therefore that can be placed to the Account of Disobedience in my Sentence is, the Part of the First Article for keeping so far a-head; and the Part of the Twenty-fourth as the Consequence of leaving my Station. But how this First Article was to have been executed, is still a Matter of Dispute, not with me; for I think there can be but this one Way, keeping right a-head (and at the Distance the Ships towards the Admiral observe) of the Ship, which, by the Method each Captain is given, you are placed next to, and a-head of. But this Discipline does not seem to be at all allowed of, the Thing

principally, if not altogether to be regarded, is being in a Line with the Admiral of your Division, no matter how the Ships next to you keep. From which it follows, that I was to have kept by the first Article the Distance from Admiral *Rowley* of four times that which was kept from one Ship to another, taking care always to be in exact Line with him, which I might easily have done, as I should (had I remained at the Distance I have mentioned;) have had nothing else to do; since I neither could have engaged the Enemy on account of the Distance, they would have been from me the little Time they lay to; and when they made Sail, which was immediately on Admiral *Rowley's* beginning to engage, I should have had no Ship of the Enemy a-breast of me; nor could I have led on with the *Sterling-Castle*, and endeavoured with her, the *Nassau* and *Chatham*, to have prevented the Enemy from getting the Wind; because in doing it, I must have broke the First Article, which required me to be an idle Spectator; and which, if I had been, the *Sterling-Castle* would have probably been so too, seeing herself deserted by her Second. And if that had been the Case, then we all four might have waited till the *French* had found Employment for the whole Van, which they were industriously endevouring at, and which, if they had succeeded in, instead of its being called the Miscarriage

of the *English* Fleet, it might have probably, with great Propriety, been called its Defeat. But tho' the headmost Ships by laying to would have been the Cause of it, yet as they obey'd their Orders, their Country must have been satisfied with them. This may be the Language now, but who is sure that if that had been the Case, it would have been the Language then? Since those Officers whom I hope I may be allowed to say have done their Country some Service, are now brought to their Trial, and broke, because the Order they proceeded upon in doing it, was to have been executed by the Fleet in the same Manner as by them, and was not, therefore they are condemned for others Disobedience, and for not having concurred with them in it; which I shall presently shew to be the Sense of the Questions asked at the Court. If this be the Case, and that they are now punished for Disobedience in not breaking those Orders for which others are charged with Disobedience for breaking, surely then they would also have been charged with it, had the Van of the Fleet been destroy'd by their concurring in this Disobedience; and the Language then would have been, Why did you not lead on agreeable to the Nineteenth Article of the Fighting Instructions? And was it sufficient, that because it was not done by others, that therefore you should neglect it? You were

the headmost Ships, and therefore those whom the Nineteenth Article had first Respect to. By this Neglect of your Duty, and Disobedience to the Nineteenth Article, you brought on the Destruction of a great Part of his Majesty's Fleet, by suffering the Enemy to gain the Advantage of the Wind, which you saw them endeavouring at for some time before they effected it ; nevertheless you lay to, idle and inactive, shewing no Regard to the Preservation of his Majesty's Fleet, or to the Instructions which directed you to steer with the Van of the Enemy, and which had you executed, you would have prevented the Distress your Idleness, Inattention, and Disobedience, have brought upon your King and Country. In these, or stronger Terms, our Charges would probably have stood, had the headmost Ships laid to in a Line with Admiral Rowley ; for the Proof of which I appeal to the Questions asked in the Court, or to Vice-Admiral Lestock's Charge against Admiral Matthews. The Questions I appeal to are, first,

**Q.** Did the Warwick and Sterling-Castle keep up with the Leaders of the French Fleet ?

**A.** Which being answered in the Affirmative, it was then asked — **Q.** Could the rest of the Van have kept up with the Sterling-Castle and Warwick ? — **A.** Which was also answered in the Affirmative, and then

then asked — Q. Had the rest of the Ships kept on, would not the Engagement have been brought on according to the Nineteenth Article of the Fighting Instructions? —

A. Reply'd, yes; then asked — Q. Did the *Warwick* and *Sterling-Castle* withdraw from the other Ships, or the other Ships keep back from the Support of them? —

A. They kept back from the *Warwick* and *Sterling-Castle*. — Q. Was the *Warwick* a principal Cause of the Miscarriage? —

A. Not in the least. — Q. Was she not a part? — A. Not any. — Q. What then was the Cause? — A. Because our Ships did not close with the Van.

Questions asked another Evidence. —

Q. Did not you think our Fleet superior to the Enemy? — A. Yes. — Q. Did you not think our Fleet would have defeated the Enemy's? — A. Yes, before we began to engage.

Q. Had not our Fleet all the Advantages? — A. Yes. — Q. Do you think the Engagement could have been brought on to greater Advantage than by complying and bringing it on according to the Nineteenth Article of the Fighting Instructions. — A. No.

— Q. Do you think then the Miscarriage of the Fleet owing to the *Warwick*? —

A. No.

Questions to another Evidence. — Q. I think you said the *Warwick* and *Sterling-Castle* were a League from you; was there any Signal to recall them? — A. No.

— Q. Do you think the French intended to have tacked and gained the Wind of our Van? — A. Yes. — Q. Do you think that if our Fleet had joined the *Warwick* and *Sterling-Castle* they could have gained the Wind? — A. No. — Q. Don't you think, that had our Fleet been properly disposed, they were not superior to the Enemy? — A. Very superior. — Q. If our Fleet had kept up with the *Warwick* and *Sterling-Castle*, would not our Fleet have been in a proper Situation to have engaged them? — A. We should have engaged them in a proper Manner.

These Questions, or to the same Effect, were asked many other Evidencees: But I chose to insert the Answers of these three, as they were the principal Evidencees Mr. *Lestock* brought against me. I shall now take Notice of two or three Questions that were asked the Master of the *Warwick*, as I think they shew the Necessity of complying with the Nineteenth Article, still stronger. It was said, — Q. You have justified the Conduct of the *Warwick* so fully, that it is unnecessary to ask you any farther Questions concerning her Behaviour. You don't think the *Warwick* was a principal Cause of the Miscarriage; what was the Cause? — A. I can assign no Cause, but the Fleet's not being in a proper Disposition to engage. — Q. Would they not have been in a proper Disposition to engage, had they

they engaged according to the Nineteenth Article of the Fighting Instructions? Had they so engaged, would they not have been in a proper Disposition to have gained a Victory over the combined Fleets of France and Spain? — A. Yes, to all human Appearance.

The Nineteenth Article was read to this Evidence, and to several others, of whom Questions of this Sort were asked. — To what End then was it read, and to what Purpose were these Questions asked? But first to shew that the Nineteenth Article was a Direction for the Van to steer with the Van of the Enemy; that had it been complied with, the Fleet would have been in a proper Disposition to have engaged the Enemy, and to have gained a Victory over the combined Fleets of France and Spain; that by its not being complied with, arose the principal Cause of the Miscarriage; to which every Ship that could have complied with it, and did not, is found accessory, as having concurred in the Breach of the Nineteenth Article, whence arises that Question, Did the *Warwick* and *Sterling-Castle* withdraw from the other Ships, or the other Ships keep back from the Support of them? And immediately following — Whether the *Warwick* was a Principal, or a Part, of the Cause of the Miscarriage? Which Questions being asked the Evidence, after they have shewn

shewn the Station the *Warwick* and *Sterling-Castle* kept, which agreeable to the Nineteenth Article, was a-breast of the head-most of the Enemy's Ships ; and after saying, that the other Ships could have kept up with them, and have brought on the Engagement according to that Article, is surely admitting that the *Warwick* comply'd with the Nineteenth Article, and in that followed the Direction others should also have done, in order to have prevented the Miscarriage by putting the Fleet in a proper Disposition to have gained a Victory over the combined Fleets ; and consequently that the *Warwick* in doing this acted all in her Power, up to the Obedience of the Nineteenth Article, and towards bringing on the Success of his Majesty's Fleet ; which Proof comes stronger after this Question. — Do you think the Engagement could have been brought on to greater Advantage than by complying and bringing it on according to the Nineteenth Article of the Instructions ? which being answered no ; — It is then asked, — Do you think then that the Miscarriage of the Fleet was owing to the *Warwick* ? Which being also answered, no ; — It is asked, — Was she accessory ? — Reply'd ; I can't think she was. — And then, as usual, it is asked, What then was the Cause ? These Questions then, as they admit the Force of the Nineteenth Article, and fix the Breach of it  
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on those who did not comply with it, and to that ascribe our Fleet's not being in a proper Disposition to gain a Victory over the combined Fleets; so do they also prove, to my Apprehension, that I am now punish'd for Disobedience in doing what if I had not done, I might have been broke for Disobedience in neglecting. For nothing appears to me more plain, than that if the Ships a-stern are guilty of Disobedience to the Nineteenth Article for keeping back, and not leading on to join the headmost Ships, that the headmost Ships would have been also guilty of Disobedience to it, if they had kept back, and not led on to the Station which the Nineteenth Article, and the Signals abroad, directed them to.

This appears to me the natural Conclusion to be drawn from these Questions; which in the Light I see them, carry so full a Justification of my Conduct, in the Disapprobation of others for a contrary Behaviour, that I must confess I do not conceive, under the same Circumstance, in what manner I could have defended myself against the Force of them; and therefore the Arguments which would have then been used for my Defence, and which are now employed against me, do not strike me with that Strength which they may be supposed to do others. But as my present Defence turns principally, if not altogether, upon shewing that the Nineteenth Article was to have been

executed by me, in the Manner it was, I shall, for farther Proof of it, make some Remarks upon Part of Vice-Admiral *Le-Stock's* Charge against Admiral *Murphys*, which begins as follow :

' That by the Nineteenth Article of the Fighting Instructions, it is expressly directed, that if the Admiral and his Fleet have the Wind of the Enemy, and they have stretched themselves in a Line of Battle, the Van of the Admiral's Fleet is to steer with the Van of the Enemy's, and thereby engage them : in Breach of which Nineteenth Article, the Admiral to windward of the Enemy, then stretching themselves in a Line of Battle, he did not then cause the Van of his Fleet to steer with the Van of the Enemy's Fleet; by reason whereof the Van of his Fleet could not join Battle with, nor engage the Van of the Enemy's Fleet, nor could the Centre of the British Fleet join Battle with, nor engage the Centre of the Enemy's Fleet ; but instead thereof, the Admiral by bearing down with the Centre upon the Rear of the Enemy's Fleet, did thereby endanger the Van of the British Fleet, by leaving the same exposed to the Van and Centre of the Enemy's Fleet. The said *William Rowley* who commanded the Van of his Majesty's said Fleet, on the said Eleventh of February, instead of being far enough a-head to attack the Van of the combined Fleets according

cording to the Signal then abroad, and the Fighting Instructions, being where the said *Thomas Mathews* as aforesaid should have been; the said *Thomas Mathews*, instead of being far enough a-head to attack the Centre of the combined Fleets, being where the said *Richard Lestock* as aforesaid should have been; and the said *Richard Lestock*, instead of being far enough a-head to attack the Spanish Squadron, which was the Enemy's Rear, being a great Distance a-stern; and the said *Thomas Mathews*, and the said *Richard Lestock*, and the said *William Rowley*, being each of them a-stern of their Stations in the Line of Battle aforesaid, the said *Thomas Mathews* contrary to Discipline, the Signal for the Line of Battle then abroad, and the Fighting Instructions to the great Danger of his Majesty's Fleet, did bear down in his Majesty's Ship *Namur*, with his Majesty's Ship *Marlborough*, and attack the Spanish Admiral in the Rear of the combined Fleets.

I am to observe, then upon this Article of Admiral *Mathews*'s Charge, that first of all it is in effect said, that the Instructions direct, in the Situation ours and the Enemy's Fleet were in, that the Van was to have steer'd with the Van of the Enemy, which Mr. *Mathews* is charged with the Breach of, in not having caused the Van of his Fleet to do.

Now whoever considers this Nineteenth Article, will, I believe, agree with me, that it carries with it a particular Direction to the Leader of the Van, in the same Manner as the first and latter Part of the Seventeenth Article does to the Officers in the Van and Rear, and has not, as almost all the other Instructions have, and as even the one which is in the Middle of the Seventeenth Article, any Signal annexed to it, which must first be made before an Officer can proceed to execute it, the Situations of the two Fleets being exactly described in the Nineteenth Article, and the indispensable Necessity of the Van conducting themselves in the Manner as there laid down makes on that account a Signal unnecessary. And it is to be observed throughout the fighting Instructions, that Signals are included in all of them, where the Situation of the two Fleets is not exactly fixed or stated, and where the Necessity of putting those Instructions in execution must depend on Circumstances of which the Admiral is therefore left to judge, and to direct by Signal as he shall find convenient. But the Instructions without Signals being all of them such wherein the Case is stated, and the Duty to be done apparently necessary, the Direction is therefore made positive, and independent of a Signal, not leaving its Execution to the Judgment of others, or laying it liable to be neglected or omitted, by Mistake,

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Accident, or any other Circumstance. There are, I apprehend, the Reasons for Instructions of one Sort having Signals to direct their Execution, and others being without them. Certain, however, it is, that the Nineteenth Article requires no Signal to the Performance of it ; if it had, and that the Admiral was to have made a Signal to cause the Van to steer with the Van of the Enemy, then must the Van have waited till that Signal had been made, before they had done so ; and if the Admiral had neglected making that Signal, in Compliance with the Instructions, then it might have been justly laid, that he did not cause his Van to steer with the Van of the Enemy, and the Blame would have then been with him, and not with the Van for not doing it ; as it would also, had he made the Signal for the Fleet to bring to, and thereby diverted the Van from pursuing that Instruction. But whilst there was a Direction given without any Signal to be waited for, or even provided, in order to its Execution, the Officer has then given him all the Authority he has to expect for the Performance of the Duty required to be done, and the Admiral in not contradicting that Direction by Signal or otherwise, does therefore, in Effect, cause the Van of the Fleet to steer with the Van of the Enemy. And if this had been neglected, and could have been done by us, then we, and not the Admiral, should have been charge-

chargeable with the Breach of the Nineteenth Article. But there is one thing in this Article of Mr. Mathew's Charge somewhat very extraordinary, which is, that whilst he is accused of not causing the Van to steer with the Van of the Enemy, it is laid, that according to the Signal then abroad, and the Fighting Instructions, the Van was to attack the Van of the Enemy. This is, I presume, the Sense of what is said, though the Words are not ranged in the same Order; from whence it is plain that the Admiral's Signals, instead of being an Interruption to the Van doing that Duty, they served to enforce the Execution of the Nineteenth Article. And if any thing be urged from Mr. Mathew's bearing down a-stern of his Station as a Reason for the Van not steering with the Van of the Enemy, I would ask if the *Dorsetshire* had been the sternmost Ship in the English Fleet, and the *Hercules* the sternmost of the combined Fleets, the former Fleet consisting of Twenty Sail, and the latter of Twenty-three, and that the Admiral when he found the *Dorsetshire* had got the Length of the *Hercules*, had thought proper to make the Signal for engaging, and himself to go down, that then whether according to the Seventeenth, as well as the Nineteenth Article, it would not be the Duty of the Van to extend themselves to the Van of the Enemy, and there engage them; and if it be allowed

in that Case, as sure it must, then is there still a stronger Reason in that we are upon, for the Van steering with the Van of the Enemy before they engage, as by the Van reaching to the Head of the Enemy's Line, the whole Fleet have it in their Power, by closing nearer, to admit the Ships a-stern when they come up, into the Engagement. Whereas, if the headmost Ships stop and engage before they reach the head of the Enemy's Line, they do by that means shut out any Succour to the Fleet that may come in the Rear, as the headmost Ships of the Enemy would not fail doubling upon them, as well to destroy them, as for to prevent our headmost Ships leading on, which most undoubtedly would have been our Case, had our headmost Ships acted in the Manner I have described. And then would not the Charge of Disobedience to the Nineteenth Article have laid heavy upon me? And if I had said in my Excuse, that there was no Signal from the Admiral to direct the Van to steer with the Van of the Enemy, would it not have been replied, that no Signal was required other than what was out, which was for the Line of Battle a-head, and for engaging: and which, together with the Nineteenth Article, I directed you to your Station? And if I had endeavoured to have vindicated myself by the said Article, would not

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the Arguments that have been used in support of the Nineteenth Article, have silenced all I could have said, concluding with this undeniable Proof of its superior Force, (if it is of any Force at all) That if the Nineteenth Article is only to be complied with with the First, and the Van never to steer with the Van of the Enemy till they are push'd on by the execution of the First Article, then would the first serve the Use for which the 19th is intended, and the 19th be superfluous and unnecessary; consequently if it be of any Use (and if it is not, why is it there?) the first Article cannot oppose the Execution of it; and in opposing the first Article to the nineteenth, is saying that we will pay a Regard only to our own Line, and not that of the Enemies, which the Nineteenth Article is particularly calculated for; and is a Provision made, whereby our Fleet may always keep up to the Head of the Enemy's Fleet, if a Part of theirs should lead on to get the Wind, whilst the other Part remained engaged with the Admiral in the Center. But if the first Article is to stop the Execution of this Service (whenever the Enemy attempts to gain the Advantage of the Wind either before or when the Fleet is engaged) that our Line may continue connected whether the Enemy's does or not, and that though they perform two or more Motions with their Fleet, we are to perform

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but one with ours, what do we do less by this stagnated Discipline than expose our Fleet to the Skill, Address and Officership of the Enemy? I believe it is now out of all Doubt, that the Nineteenth Article cannot be destroy'd by the First, and that therefore had I comply'd with the First, and not the Nineteenth, I should have been guilty of Disobedience to the Nineteenth; and I believe it is also out of all Doubt, that an Officer cannot be guilty of Disobedience for doing, and for not doing the same thing; yet I think my Situation proves, that he may be found so: And if a Disobedience could be found where it was not, and where if it had been, it must at least be allowed, that no ill Consequences did arise, or could have arose, from it; and if the Opinion of all the Officers in the *Mediterranean*, Mr. *Lefrak* not excepted, can have any Weight with People, then must they believe, that this supposed Disobedience was the Means of preserving the Man, which would have been destroy'd, had they acted up to the Obedience required of them. If then, I say, I have received so severe a Stroke on account of not having paid a due Regard to this presumptive, injurious, destructive Obedience, how home then would this two-edged Sword have cut, had I neglected to pay Obedience to that plain, obvious and important Direction? From which Neglect would have been derived the most fatal Consequences to

his Majesty's Fleet. Would then the Questions and Arguments that have been now employ'd to destroy the Service of the head-most Ships in the Van, have had any Weight coming from me ? Had I pleaded that I lay to in a Line with Admiral *Rowley* to strengthen the Line, and engage the Enemy, would it not have been replied, how did you strengthen the Line, and to what Purpose did you engage, when the Enemy was at a Distance you could not do proper Execution at ? And when the Enemy led on, which was immediately on the Rear-Admiral's beginning to engage you had then no Ship left near you ? If then I had said, that seeing the *Boyne*, *Chichester* and *Nassau*, somewhat to Windward of the Admiral, I thought it my Duty to go and close the Line with him, in order to give him Assistance, it might have been reply'd, That you were very alert, to run out of your Station into that of an eighty Gun Ship's, when you saw the Enemy was preparing to double upon you, under a Pretence of closing the Line, and assisting the Rear-Admiral. It seems rather, that seeing the great Danger you were in of being swallowed up by the Enemy in remaining where you was, that you went to place yourself by those great Ships for Shelter rather than to give the Admiral any Assistance : And it appears the more so, that you did this for that Purpose, as the Admiral neither made a Signal for the *Boyne* and *Chichester* to

to come nearer to him, or you to come in their Place, which he would have done had he judged it proper : Besides, did you ever hear either of closing the Line in the Place of Ships before they left it, on account of Damage they might have received from the Engagement ? Which the Twenty-fourth Article supposes to be the Case, when they do leave it, and therefore directs the next Ships to close as the Ship having left her Station is concluded to be in no Condition to return again to it soon : Or, did you ever know the Line closed from a-head to a-stern ? What Confusion would that make if it was practised throughout a Fleet ? Your closing the Line then seems to be very ill timed, and out of all Method ; and as to your giving Assistance, there was not much Likelihood of that by your going to the Admiral ; since first of all you filled an eighty Gun Ship's Place, and you were sure upon the Enemy's coming to Windward of having two Ships of theirs to engage with. The Assistance you could have given to the Admiral would have been by your headmost Ships leading on with the Enemy, thereby to have prevented their doubling upon him ; to which if I had reply'd, what could our two Ships have done to prevent them ? Should I not have been told, Don't mistate Facts, there were the *Nassau* and *Chatham* besides your two Ships ? To this I might have answered,

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That if we had kept on with the Enemy, and to Windward of them, they might have cut us off: Besides, could so inferior a Force as we should have been of to them, having only four Ships, and they eleven, have hindered them from Tacking had they had a Mind? To which it might have been reply'd, How was it possible for you to be cut off whilst you kept to Windward, since by tacking with the headmost Ships of the Enemy, you could have either join'd your own Fleet sooner, by going with a fair Wind down upon them, whilst the Enemy must have kept close upon a Wind; or you might, with your four Ships, have attacked their headmost before they had come the Length of our Ships that were laying to, and thereby either stopped them, or thrown their Line into Disorder; or had you suffered some of their headmost Ships to have gone to Windward of the Ships that were lying to, you might have then placed yourselves to Windward of them, and have also brought their Ships betwixt two Fires, in the same manner as they had done ours; by which means, whilst the Enemy had continued in two Lines, and we in two Lines also, the Enemy could not have employed any very superior Force upon us, nor any more a-breast of us, than we should have had a-breast of them. And had the remaining Part, that could not have been employed upon us other-

otherwise, than by getting the Wind of our four headmost Ships have succeeded in it, [which it would have been hardly possible for them to have done] then would their Fleet, by being thus divided into three Squadrons, have been so intermingled and mix'd with ours, that it would have been out of their Power to have separated themselves from us; from which Circumstance they might have afterwards became an easy Prey to our Fleet. For these Reasons, therefore, tho' your Force might not be sufficient to have prevented the Enemy from tacking and gaining the Wind of the Ships that laid too, had they been determin'd upon doing it, yet would they either not have done it, or if they had, the Consequences would probably have been much more fatal to them than us. This you might have foreseen had you known your Duty, as also the certain Distress you exposed the whole Van to, by your ridiculous, unmeaning, and unofficer-like Behaviour. You could not but see that the *French* led on to get the Wind of you, or else what do you think they led on for? You could not but know that you were of no Use where you were; and that by remaining there the *French* would spread a double Line along your single one; from which great Superiority, nothing but Destruction was to be expected on your side, and a cheap Victory on theirs: who, from

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the advantageous Situation of their Weathermost Ships, could remain as long as they thought proper engaged with ours, and return when they saw Occasion to form the Line with their Ships to Leeward. These Advantages, would it not then have been said, you have given to the Enemy ? And these Advantages every Seaman must know they could have taken, had the headmost Ships laid to in a close Line with Admiral *Rowley*; and till I hear better Reasons given than I have hitherto done, I will remain in the Belief, that the headmost Ships by keeping on with, and to Windward of the Enemy, prevented the Enemies executing the Design of weathering, and placing the Van betwixt two Fires. And to those who are of another Opinion, or who do not care to admit the Service of the headmost Ships, I send the following Questions; the first of which, I think, no one ever yet refused to answer in the Affirmative, viz.

1. Did the *French* lead on to get the Wind of us?— 2. Would they not have been able to have weather'd the whole Van, if all the Ships a-head of Admiral *Rowley* had laid to in a close Line with him?—
3. As the *French* then would have weather'd our whole Van, if our headmost Ships had laid to, did not the headmost Ships by keeping under Sail and to Windward, prevent the Enemy from weathering our headmost

most Ships?— 4. And if the Enemy could have weather'd the part that was laying to and did not, was it not plain that their Design was to weather the whole only?— 5. And therefore did not the headmost Ships, by keeping under Sail and to Windward of the *French*, defeat the Designs of the Enemy, and prevent their doubling upon the Van, and placing it between two Fires?— 6. And as the *French*, if they had doubled, would have been able to employ that part of their Strength upon us, which they did not, on account of our headmost Ships keeping the Wind of them, was not the part of the *French* that did not engage, equal to three times the Force of our headmost Ships that led on with the Enemy? Did not then the headmost Ships, by keeping off three times their own Force from Admiral *Rowley* and his Division, act more for the Security, Assistance, Protection, and Defence of that Division, than they could have done by joining him with a Force not more than equal to a third of that which the Enemy would have then brought upon him?— 7. Would not then a contrary Behaviour that had brought on the Destruction of the Van, been inconsistent with that Regard every Officer ought to have to the Preservation of his Majesty's Fleet?

I flatter myself then, that the Service the headmost Ships were of in keeping on with  
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the Enemy, will be by few disputed who are at all informed of their Behaviour, and by none, with any Force of Reason contradicted; and that they did this Service consistent with their Orders, is, I presume, equally demonstrable. But I am sensible how difficult it will be to persuade People into that Opinion, in Opposition to the different Sense and Interpretation of the Court Martial: And therefore, with those whose Attention will not give them leave to examine this Matter, I shall probably be thought to have disobey'd my Orders.

I, nevertheless, may hope to stand in this degree of Esteem with them, that the Service of my Country was superior with me to all other Considerations that could come in Competition with it; others there are, who knowing nothing more than that I was tried for my Behaviour in the Action off *Toulon*, and broke for it, will take up an Opinion much more disadvantageous to my Reputation, than the Sentence of the Court will authorize them in; but the discerning and judicious part of Mankind, who will be at the trouble to look into this Justification of my Conduct, will, I flatter myself, find it not deserving the Censure of Disobedience pass'd upon it; and perhaps they may be of Opinion, that even a Disobedience, under the Circumstances my Conduct stands, would be sufficiently justified by the good Consequences

quences it brought ; and that an Officer who risques his Commission to do a Service to his Country, has Reason to expect, if he succeeds in it, he will at least escape that Punishment he would have met with had he failed. And if there is any Discipline which extends to punish an Officer for varying from his Orders, when the Service makes his doing it absolutely necessary, it is such a one that I am sure the Good of the Service can never admit ; it is such a one whereby all Judgment, Prudence, Conduct, and Discretion, are made unnecessary in an inferior Officer : Qualities which ought chiefly to distinguish one from another, and without the Use of which, unless an Admiral, or commanding Officer, had all Knowledge to foresee and provide against every Accident or Event, the Ships under his Orders must frequently fall into Distresses they might avoid. Yet such is the Discipline now established, a Discipline which however severe, yet did I flatter myself it would not have extended to me, as I thought it would at least have appeared to the Court from the Nature of my Orders, that if I erred in not conforming to them, it was an Error arising from a Mistake in my Judgment of them ; and therefore I hoped some favourable Allowances would have been made on that Account : and the rather, as the Court had in-

interpreted a Failure they found an Officer under, as an Act arising from a Mistake in Judgment, and therefore had mitigated his Sentence on that Account, and a Mistake of such a Nature, which, I must beg Leave to say, the Judgment must be as little concerned in, as any Mistake that can possibly happen. As I apprehend it is supposed by the Court, that Captain Ambrose believed himself to be in a Line within point-blank Shot, and near enough the Enemy to do proper Execution, but that he was not; if this was his Mistake, it was sure, as I have before observed, of such a Sort as the Judgment has but little to do with, in his Situation. A Deception of Sight might, indeed, possibly mislead him and his People; but without that happening, I must own I cannot see how he or they could be mistaken in their Judgments of those Facts, which must be established by the Elevation or Depression of the Metal, at the Time of firing the Gun, and observing the Fall of the Shot, and in what Respects the Line, every time they looked towards the Admiral, must satisfy them of the Certainty of their being in it, or not. These Particulars are, it is true, difficult to be ascertained by People at a Distance, who, from their Situations, may be very much deceived in respect of the Line; and as to the Distance of point-blank, they can

can judge with no Degree of Certainty whenever they see the Shot go over the Enemy.

If then to a Mistake of Judgment (which I believe Captain *Ambrose* will hardly be persuaded to allow of, as People generally believe what they see with their own Eyes) could be imputed the Cause of Captain *Ambrose's* acting as he did, could it not with some Propriety also be imputed to me, if I was guilty of Disobedience to the Instructions? Was it so clear a Point that I acted in open Defiance of them, that there was no Room to suppose a Mistake of Judgment? And if there was Room to suppose it, could there be a fairer Occasion to admit it than where the Good of the Service was the Object of my Pursuit? But it is not necessary (Captain *Williams* has experienced) for a Point to be very clear concerning even the Fact, in order to be found guilty and condemned upon it; therefore agreeable to this Method of proceeding, I could hope for as little Favour, where the Fact was agreed on, and the Doubt only arising whether I was mistaken in my Judgment, as I might have expected from the Determination of Captain *Ambrose's* Conduct, more than I have found. The Letter of the Instructions, as it stands in the Interpretation of the Court, is the Thing insisted on with me; the Breach of that, under any Circumstances whatever, is not excusable; and whatever

the Service in view is, yet on no account is it to be performed in contradiction to that standing Rule, though it should appear to have been differently understood by the Person who performed it : for if once an Opening is given for explaining Orders different from what they are, few will be left without an Excuse for breaking them. This Discipline, in respect of me, may, perhaps, be applied, supposing I had acted contrary to the Letter of the Instructions ; but how will it hold in respect of Captain *Burris*, who is brought under Part of the Fourteenth Article of War, for not going to the Assistance of the *Marlborough* sooner than he did ? Since it does not appear that she had any Signal of Distress out, which is the Condition of one Ship going to the Assistance of another, without which she is not on any Pretence to leave her Station in the Line of Battle. How then could that Gentleman have acted differently from what he is said to have done, and not incurred the Censure of the Court upon the Principle I have ? And how could I have acted differently from what I did, and not have incurred their Censure upon the same Principle he has ? Can it be said, that his Duty was obvious and plain, and required no Signal to direct him to it ? And that a Ship in the apparent Danger the *Marlborough* was in, called for immediate Succour and Protection from

from the Enemy ? And therefore, when his Majesty's Ship is in Danger of being overcome by the superior Force of the Enemy, no Officer need wait for a Direction to prevent her Destruction.

If the Case is thus stated, and sure it is stated much stronger than it will bear, as the Enemy is said to be in as great Distress as the *Marlborough*, and the Gentleman who commanded the *Dorsetshire* at the time she is said not to go to her, was repairing his Damages and clearing his Ship of Water ; yet, under all these Circumstances, if he is required to have immediately gone to the *Marlborough* to protect her from the Enemy, would it not also, had I remained inactive whilst the Enemy was endeavouring at the Means of destroying my Rear-Admiral and his Division, have been required of me to have prevented it, by the most effectual Methods in my Power ? And had I for want of a Signal to do this Service, neglected it, and thereby the Rear-Admiral and his Division been destroy'd, would that have plead'd my Excuse any more than it has now done Captain *Burriß*'s, when neither the *Marlborough* was destroy'd, nor in the Danger Admiral *Rowley* and his Division would have been in, had the *French* doubled upon him ? Neither should I have been able to plead with Captain *Burriß* the Condition of my Ship,

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as a Reason for not performing the Service required of me.

How then is an Officer to turn himself to act right ? Can it be said, that the Preservation of the *Marlborough* was of more Importance than that of Admiral *Rowley* and his Division ? Or can it be said, that the Obligation was less binding with me, in respect of giving Assistance to Admiral *Rowley*, by keeping the Enemy from him, than it was to Captain *Burriß* giving that Assistance to the *Marlborough* before he received the Order for doing it, on which he is allowed to have done it ? And therefore the time fix'd when he did it not, was when he was under no Order for doing it.

It should seem then by Captain *Burriß*'s Case and mine, that the Letter of the Instructions may be dispensed with to fix Blame upon an Officer, but not to acquit him ; yet the Case of Captain *Sclater* destroys also this Inference ; who, in like manner as myself, stands charged of being a-head and to Windward of his Station, and on that Account is said to have broke those Articles I am said to have done for the same Facts. Now I do readily agree with the Court, that Captain *Sclater* did his Duty like a gallant Officer ; and that he did it better for not complying with those Articles of the Instructions (which relate to the keeping his Station) in the strict Sense they are required of me, . since

since it is very certain, that if he had been, and continued, within a Cable and a half, or two Cables length of Admiral *Mathews*, he would have had much less Engaging upon his hands; as the *Neptune*, which Ship he is said first to have engaged, would have escaped him, she being a Mile from the *Real* when the *Somerset* engaged her; consequently, the *Somerset* that Distance from Admiral *Mathews*. And afterwards the distance from the *Somerset* to Admiral *Mathews*, is by the Evidences made from two to five Miles. And admitting one or the other of these Distances, it follows that the *Somerset* was a great way a-head of her Station in the Line of Battle, agreeable to the part of the First and Seventeenth Articles of the Fighting Instructions.

How she came there then is the next Question! Why it appears, as I have already said, that the *Neptune* was a Mile a-head, and being the third Ship from the *Real*, and no other of the Enemy a-head of her but what was joined to the *French*; and the *Somerset* being also the third Ship from Admiral *Mathews*, Captain *Scilater* therefore thought it his Duty to attack her, paying a proper Regard to the Enemy's Line, and by it complying with the Nineteenth Article of the Instructions. It appears afterwards the *Somerset* pass'd with a Spanish Ship to Leeward of the *Dragon* and *Berwick*, and that the

the latter bore down under the Stern of the *Somerset* to give the *Pader* Battle, which Ship had fallen a-stern of the *Somerset*, on the latter having carried her Foretop-mast-a-way ; on which the *Somerset* ceased firing, and in ten Minutes after got her Main-Tack on board. And when our Fleet tacked in the Evening, the *Somerset* was to Windward of the Rear-Admiral, and within Gun-Shot returning again to her Station.

What I have here said regarding the *Somerset's* Progress, is from the Minutes taken on the Trial, and is what Captain *Schaper* will, I am sure, most readily admit, as his being out of his Station was occasioned, as he told me, by following the Enemy. And therefore I should have been as ready and willing as any Member of the Court, to have overlook'd a Fault which his eager Desire of distinguishing himself, spur'd him on to commit ; more especially as the Situation of the two Fleets was such, as made the preserving of the Line of Battle in the part of the Fleet he was in not so necessary, in regard as there were none of the Enemy's Ships engaged a-break of those he pass'd. Certain then it is, that Captain *Schaper* fought both in his Station and out of it ; and that he was first carried out of it, because he would not discontinue the Engagement with the Enemy : and when it was at an End, I do suppose he got on board his Main Tack, and made

made Sail that he might not be in the Way of giving Interruption to any Motions of the Fleet, whilst he was repairing his Rigging and other Damages. This appears to me to be the State of the Case; and I believe it is as Captain *Selkirk* himself would state it; and not account for going a-head as some of his Evidences seem to do, because their Braces and Bow-lines were cut, and their Sails like Cullenders, though not a "Clue-garnet", or Clue-line\*, mentioned amongst the Rigging said to be cast away. This Description would be a very good one to shew the Incapacity of a Ship going a-head; but to give it as a Reason for her not being able to help it, is as extraordinary as to assert, that a Man can't help walking, because his Legs are broke. I have now very fully declared my Opinion of Captain *Selkirk's* Behaviour, and shewn, that I think he deserved all that the Court have pronounced of him, in his Sentence; therefore what I may farther say concerning his Station, must not be looked upon in a Light different from what I have hitherto said; but is only meant to shew by it, that if Discipline had been the Thing duly attended to, then he, as well as I, had suffered (in the Interpretation of the Court) for a Breach of it: For it is past a Contradiction that the Part of the First Article was no more complied with by him than me; it is also past a

\* These are the Ropes by which the Sails are hauled or pulled up.

Contradiction, that the Part of the Seventeenth Article was not complied with by him more than me; and, therefore the Part of the Twenty-fourth was consequently as much broke by him as me. And if it be urged that as he was engaged and I was not, that therefore there is a Difference, I will admit there is, and that on that Account the Part of the Seventeenth and Twenty-fourth Articles are more particularly applicable to him than me, as they are calculated solely with a View to the Conduct of an Officer whilst he is engaged in a Fleet. Why then am I condemned for breaking those Articles, which Captain *Sclater* at least equally broke, and is acquitted of? Were the Purposes which were scryed by breaking them of his Side greater than mine? Or could they have been executed by others had I not done it, or only by him had he neglected it? I have often asked, and I must again, whether the contributing to the Preservation of Admiral *Rosseley*, and his Division was not of equal Importance with any other Service that was in the Power of a single Ship, that Day. And if it was, the Breach of Orders are on that account to be equally passed over, as in the Execution of another Service; and the rather, if the preserving the Rear-Admiral's Division could not be effected but by the joint Concurrence of the Ships that executed it, and that, another Service could be done by others as well as him who did it.

With what then is my Sentence consistent, or to what is it reconcileable? Is it consistent even with itself? Or Is it reconcileable to the Instructions? Does it correspond with the Charge against others for the Breach of the Nineteenth Article? Or is it not contradicted, and the Discipline of it thrown to the Ground in the Sentences of others? Is there a Part in it, that can with any Propriety be fixed upon me, that cannot with at least equal Propriety be fixed upon Captain *Slater*, who has been acquitted of it? And if still I am distinguished from him by the Breach of the Thirteenth Article, I do insist that neither consistent with the Thirteenth Article, with what the Evidences have deposed, or with the Sentence, can it be fixed upon me. And farther I do insist that it cannot either consistent with the Sentence of Captain *Williams*, since it is very certain that in attempting to comply with any Part of the Thirteenth Article, (which I cannot understand is ever intended to be separated,) I must have intimatedly put myself in the Power of the Enemy as much or more than Captain *Williams*, when he withdrew for the Safety of his Ship; which is far from being affected by the Court as an un-officer like *Adm.* where then shall we look for a Reason for condemning me upon what others have equally been guilty, if Guilt it can be called, and required of; and where shall we find an Officer that

now can say he knows his Duty amidst this Discipline, or who will not grieve to find that it can be separated from his Country's Service? For my own Part I shall now no longer be employed in it, nor indeed am I at all equal to the Performance of my Duty on those Terms; for I dare not do an Act that would bring Distress upon my Country. But I think in a Cause where I judged its Safety and Welfare concerned, I should not suspect myself to be wanting in my Duty, and I believe there are Officers now in England that will do me the Justice to say, That the Spanish Fleet had not gone unfought when they first came through the Straights, had the Opinion of others, (which for ought I know was the wisest and best) been the same as theirs and mine, at a Time when nothing but the superior Resolution of our Officers and Men could have given us Hopes of Success, and when nothing but the pressing Necessity of the Attempt could have justified it, which on the one Hand, as it was an Argument for it, so on the other, there was Room to apprehend the worst of Consequences from a Miscarriage. This perplexed Situation divided that worthy good Admiral (whose ill Health every one laments) into Doubts of so delicate a Nature in respect of himself, and of so high a one in respect of his Country, that nothing but the latter Regard which was prevalent in him, and his

perior

erior to all private Considerations, could have with-held him a Moment from pursuing the Bent of his Inclination. And when such a Man could have a Doubt whether he should go out and engage the Enemy, every one must allow, that there is a Situation in which the bravest Man may regulate his Conduct to his Country's Interest; and that the great Object in engaging is that, and not its Destruction: and therefore when the latter is apprehended, it is Rashness, and not Courage, that leads to Action.

But I have done with any farther Remarks of this Kind, it is now my Province to enter farther upon them: And I should not have engaged so far in them, had not my Justification made it necessary. All that I have to contend for, is to support my Character against the cruel Attack that has been made upon it; and in this sure the Members of the Court-Martial will not be offended, who have deprived me of my present Dependance and future Hopes; and with them have made a deeper Wound, and such a one as Time can never heal. Fortune or Power might restore the former, but nothing can a fair Reputation, which I flatter'd myself into a Belief of having had, and that I thought so greatly worth my Care, that I never put it to the Hazard, for any Advantage either present or future.

But

But when I least of all expected it, it was taken from me; yet am I left with the Consciousness of having done my Duty. And my Ambition, which was before, to rise in my Country's Service, is now that I have fallen for it: And in that have learnt, that no Man's Reputation or Fortune can be secure whilst he is in the Power, and his Actions depending on the Explanation of others.

you have, and shall do it, by means of your  
Country's Agents.

But

# FIGHTING INSTRUCTIONS.

## ARTICLE I.

WHEN the Admiral would have the Fleet draw into a Line of Battle, one Ship a-head of another, (according to the Method given to each Captain) he will hoist an Union Flag at the Mizzen-Peek, and fire a Gun; and every Flag-Ship in the Fleet is to make the same Signal. And every Ship is to observe and keep the same Distance these Ships do which are next the Admiral, always taking it from the Centre.

If the Admiral be to Leeward of the Fleet, or any Part of the Fleet, and he would have them bear down into his Wake or Grain, he will hoist a Blue Flag at the Mizzen-Peek, and fire a Gun.

## XIII.

As soon as the Admiral shall hoist a Red Flag on the Flag-Staff at the Foretop-mast-head, and fire a Gun, every Ship in the Fleet is to use their utmost Endeavour to engage the Enemy, in the Order the Admiral has prescribed unto them, and strictly to take Care not to fire before the Signal be given by the Admiral.

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## XVII.

If the Admiral see the Enemy's Fleet bearing towards him, and he has the Wind of them, the Van of the Fleet is to make Sail till they come the Length of the Enemy's Rear, and our Rear-a-breast of the Enemy's Van; then he that is in the Rear of our Fleet is to tack first, and every Ship one after another as fast as they can throughout the Line. And if the Admiral would have the whole Fleet to tack together the sooner to put them in a Posture of Engaging the Enemy, then he will hoist an Union Flag on the Flag-staves at the Fore and Mizen Top-mast Heads, and fire a Gun; and all the Flag-Ships in the Fleet are to do the same: But in case the Enemy's Fleet should tack in the Rear, our Fleet is to do the same with an equal Number of Ships; and whilst they are in Fight with

with the Enemy, to keep within half a Cable's Length one of another, or if the Weather be bad, according to the Discretion of the Commanders.

## XIX.

If the Admiral and his Fleet have the Wind of the Enemy, and they have stretched themselves in a Line of Battle, the Van of the Admiral's Fleet is to steer with the Van of the Enemies, and there to engage them.

## XX.

Every Commander is to take Care that his Guns are not fired till he is sure he can reach the Enemy upon a point-Blank; and by no Means to suffer his Guns to be fired over any of our own Ships.

## XXXI.

If any of the Ships in the Fleet are in Distress, and make the Signal, which is a Weft with the Jack or Ensign, the next Ship to them is strictly required to relieve them.

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## XXIV.

No Ship in the Fleet shall leave his Station upon any Pretence whatsoever, till he has acquainted his Flag, or the next Flag Officer to him, with the Condition of his Ship, and received his Direction therein; but in case any Ship shall so do, the next Ships are to close up the Line: And if any Commander shall be wanting in doing his Duty, his Flag or the next Flag Officer to him, is immediately to send for the said Commander from his Ship, and appoint another in his Room.





## Articles of War.

### XI.

**E**VERY Captain, Commander, and other Officer, Sca-man, or Soldier of any Ship, Frigate, or Vessel of War, shall duly observe the Commands of the Admiral, or other his Superior or Commander of any Squadron; as well for the attacking, or fitting upon any Fleet, Squadron, or Ships of the Enemy, Pirate, or Rebels; or joining Battle with them, or making Defence against them; as all other the Commands of the Admiral, or other his Superior Commander, upon Pain to suffer Death, or other Punishment, as the Quality of his Neglect or Offence shall deserve.

### XII.

Every Captain, and all other Officers, Mariners, and Soldiers, of every Ship, Frigate, or Vessel of War, that shall in time of any Fight, or Engagement, withdraw, or keep back

back, or not come into the Fight and engage, and do his utmost to take, fire, kill, and encourage the Enemy, Piracy, or Rebels; and assist and relieve all and every of his Majesty's Ships; shall for such Offence of Cowardice or Disaffection, be tried, and suffer Pains of Death, or other Punishment, as the Circumstances of the Offence shall deserve, and the Court-Martial shall judge fit.

## XIV.

Whatsoever Person or Persons in, or belonging to the Fleet, either thro' Cowardice, Negligence, or Disaffection, shall Forbear to pursue the Chase of any Enemy, or Piracy, or Rebel, beaten or flying, or shall not relieve, or assist a known Friend in War to the utmost of his Power, shall be punished with Death, or otherwise, as a Court-Martial shall find fit.

## F. I. W. I. S.

That Captain, or Officer, who in the Service of His Majesty, or of any other State, or Country, or of any other Person, or Body of Persons, shall be guilty of any of the following Offences, shall be liable to punishment according to the Law of War.